

INSURANCE AND PIRACY

A Cargo Insurance Perspective



Candidate number: 8003

Supervisor: Trine-Lise Wilhelmsen

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UNIVERSITY OF OSLO

Faculty of Law

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1 Introduction

The aim of this paper is to analyse the coverage provided by the 1995 Norwegian Cargo Clauses (CICG) and the 1982 Institute Cargo Clauses (ICC) for any loss to cargo caused by an Act of Piracy. It is of importance for a cargo owner to understand the breadth of coverage provided by their cargo insurer for the Act of Piracy. This is because Piracy can have expensive consequences, for an example total loss or damage to the cargo or expenses associated with measures to avert and minimize loss such as ransom payments and fees associated with a port of refuge.

The CICG and the ICC have been chosen to provide a comparative aspect to the paper. The two clauses have been constructed from two of the leading Marine Insurance Nations, Norway and England, which seem to be constantly in competition to attract the World's Maritime Clientele. Furthermore the CICG and ICC provide a comparison between common and civil law.

A sub aim of this paper is to establish a meaning for the term Piracy in the context of Cargo Insurance. It shall be notified further on, that this is not an easy task. However to provide clarification to the reader and to assist in understanding the initial chapters of this paper, Piracy shall be defined using the 1982 United Nations Convention on Law of the Sea (UNCLOS) definition in Article 101 that states:

“Piracy consists of any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or aircraft, and directed:

- i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;*

- ii) *against a ship, aircraft, persons or property in a place outside the jurisdiction of any state.”*

The paper will begin with an introduction to the problem of Piracy in Chapter 2 followed by an overview of the CICG and ICC Cargo Clauses in Chapters 3 and 4. Then in Chapter 5, 6 and 7 the coverage for Piracy will be analysed, this will include the establishment of a definition for Piracy in relation to the CICG and the ICC and a discussion on the issue of causation and combination of perils. Finally, Chapter 9 will deal with the coverage provided for measures to avert and minimize loss caused by an Act of Piracy.

2 Practical Problem

2.1 Introduction

Simply put the practical problem of Piracy is that it can cause significant loss or damage to the cargo owner's goods whilst in transit. This chapter will briefly discuss the issue of Piracy and the problem encountered by cargo owners.

2.2 The Issue

Piracy has been a traditional problem for cargo owners that have transported their goods on the sea; however the evolution of Piracy in the 21st Century has caused considerable worries not only for the cargo owners but also for the insurers.

In the past 10 years the number of reported incidents of Piracy has reduced from 445 in 2003¹ to 293 in 2008.² The major problem though, is not the number of incidents, but the

¹ Mukundan, P., "Piracy and Armed Attacks Against Vessel's Today," *The Journal of International Maritime Law* Vol. 10 Issue 4 August- September 2004 p.374

² Larson, B., 'When Pirates Attack', cont. Hare, J., Rasch, J., Wegener, A. *Beacon SKULD Magazine* June 2009 Issue 194. pp. 6-10

evolution of Piracy from acts of petty theft to sophisticated hijackings of large vessels. The number of hijacking attempts increased substantially during the first half of 2009 compared to the same period in 2008.³ The costs and risks involved with an Act of Piracy have increased substantially.

Geographically Piracy has occurred in a variety of regions, the hot spots being, the Horn of Africa (where most hijackings have occurred), South East Asia, West Africa and Central America.⁴ It is common that Piracy occurs in regions where maritime traffic is high and areas where there is political unrest. Furthermore Piracy has occurred both within the 200 nautical mile Exclusive Economic Zone as well as beyond on the High Seas.

2.3 The Problem

The problem is that the cargo owner is faced with considerable expenses if an Act of Piracy materialises. Often the cargo owner is helpless to react and may have to contribute to any costs which the carrier has spent to avert and minimize the incident. These costs can amount to large sums.⁵ Below is a general list of the losses, costs and expenditures a cargo owner may have to expend due to an Act of Piracy:

Cargo Losses

- ❖ Total Loss of the Cargo: due to the cargo being stolen, due to delay or due to a direct infliction by the Pirates, for an example weapon fire or explosion.
- ❖ The cargo is damaged: due to delay or due to a direct infliction.

³Lloydshttp://www.lloyds.com/News_Centre/Features_from_Lloyds/News_and_features_2009/360/Piracy_problem_persists_in_gulf_of_aden_200809.htm (accessed 24/08/08)

⁴Larson, B. 2009 p. 7

⁵Lloyds (accessed 24/08/08)

Cost and Expenses Associated with Measures to Avert and Minimize Loss

- ❖ General Average Contributions: include ransom payments, negotiation expenditures, port of refuge expenses, diversion costs, losses and damages to the vessel or the cargo and search and rescue costs.
- ❖ Salvage Charges: rescue efforts, fees fines and third party liabilities.

3 Legal Sources

3.1 Introduction

This paper will be an analysis of the Norwegian and English Cargo Clauses. In Norway the standard clauses that are in use are the CICG published by the Nordic Association for Marine Insurers. These were revised in 2004.

In England the standard clauses being used in the trade are the ICC developed by the Institute of London Underwriters (ILU).

3.2 The ICA and the MIA

The 1989 Norwegian Act on Insurance Contracts (ICA) and the 1906 Marine Insurance Act (MIA) are the predominant forms of legislation governing the CICG and the ICC respectively.

The rules contained in the ICA are mandatory to all Norwegian Insurance Contracts that are not governing matters of life insurance.⁶ The CICG has accommodated for this issue and the clauses are drafted to correspond with the rules in the ICA. Nonetheless the international nature of maritime transport means that the CICG can excuse a number of the

⁶ 1989 ICA Section 1-1

ICA's rules and regulations. The principle for this is stated in ICA Section 1-3 (e) where it states "the provisions (ICA) may nevertheless be departed from in the case of insurance relating to commercial business when the insurance relates to goods in international transit, including transportation to and from the Norwegian Continental Shelf."⁷ Therefore in relation to international transit, where Piracy is likely to occur, the clauses may divert from the mandatory rules in the ICA and be revised to accommodate for the particular events that are more likely to occur outside of Norwegian domestic voyages. The CICG standard clauses already adjust the rules of the ICA in one particular event and that is in regard to salvage, the issue of salvage will be discussed further in Chapter 8.4.

The MIA is a codification of the legal cases prior to 1906.⁸ It regulates all issues in regard to the construction and basic principles of a marine insurance contract. It is not mandatory per se; nevertheless a judge or arbitrator is obliged to consider its words when interpreting a dispute arising from a marine insurance contract (MAR policy).

The MIA in relation to the ICC and the interpretation of the word Piracy has become partially outdated. The clauses in the ICC still abide by many of the basic principles in the MIA; however the ICC clauses are predominantly self explanatory. The MIA only briefly presents the word Piracy⁹ and with the introduction of the MAR form of policy the presentation seems to be somewhat contradictory. This is because the coverage for Piracy switched from a War peril to a Marine peril when the MAR form of policy was introduced.¹⁰ In relation to the interpretation of Piracy in the ICC other cases seem to shed more light on the meaning for Piracy than the MIA.

⁷ 1989 ICA Section 1-3 (e)

⁸ Brown, R.H., *Marine Insurance Volume 1 Principle and Basic Practice*, (Witherby Publishers 1998) p. 3

⁹ 1906 MIA, Rules for Construction of Policy, Pirates no.8 "the term pirates includes passengers who mutiny and rioters who attack the ship from the shore."

¹⁰ Miller, M.D. *Marine War Risk Third Edition* (Informa Professional London) p. 207

3.3 History of the CICC

The History of Norwegian Cargo Clauses stems back to 1871 where ship owners, cargo owners and other interested parties negotiated a set of standard clauses to be integrated into contracts. The standard sets of clauses were coupled with a detailed commentary, which has become a tradition in Norwegian Marine Insurance. Initially cargo clauses were included in a plan together with ship owner insurances such as Hull Insurance clauses. However in 1967 the Norwegian Insurance Plan for the Carriage of Goods was established.

In 1989 the ICA was introduced. There was a need to alter the standard set of cargo clauses in the 1967 Norwegian Insurance Plan for the Carriage of goods, to develop a coherent relationship between the Cargo Clauses and the ICA. The CICC was the construction from these alterations.¹¹

The CICC was designed to be used for both domestic and international transits. In regards to domestic transport there are mandatory sections in the ICA that will override the CICC.¹²

3.4 History of the ICC

The ICC is the predominant set of cargo clauses used in global trade. The clauses are designed to be the only form of standard clauses to be integrated with the MAR form of policy (Marine Policy). The MAR form of policy is a standard blank Marine Insurance Contract that is mandatorily used within the London Cargo Insurance Market, which includes the renowned insurance market, Lloyds.¹³

England has a long tradition of Cargo Insurance and the first standard cargo clauses were developed to be used with the SG policy form. In 1795 an act of parliament made the SG

¹¹ Falkanger, T., Bull, H.J, Brautaset, L. *Scandinavian Maritime Law, The Norwegian Perspective*, 2nd ed. (Universitetsforlaget, Oslo 2004) p.477

¹² *ibid.*

¹³ Brown, Robert H. Vol. 1 1998 p.143

policy form mandatory.¹⁴ This was adjusted in 1906 when the MIA was introduced and did not state anything similar. The SG form of policy and the MIA are influential in the development of the ICC as they are involved in precedent which guides the interpretation and usage of the MAR form of Policy and the ICC. However the SG form of policy with its additional clauses has been regarded as a form of Cargo Insurance that was complicated and outdated, and the creation of the MAR form of policy and the ICC has been established in avoiding the SG form of policy's weaknesses rather than following its strengths.¹⁵ The MAR form of policy is also used for Hull Interest Insurances.

4 What is Cargo Insurance in a Norwegian and English Context

4.1 Introduction

As stated in Chapter 3.2.3 the CICG and the ICC are a set of standard clauses that can be used in an Insurance Contract. They are complete in the sense that they provide the extent of coverage, the limitations and restrictions to coverage, the period of coverage and the law that will govern any dispute arising from the Insurance Contract.

The parties to a contract where the ICC and CICG have been incorporated are the insurer and the assured (cargo owner). However Cargo Insurance is unique in that the assured will not necessarily be the initial assured in the contract. Often goods (cargo) are transported in association with a sales arrangement. For an example there is a seller of cars in England and a Buyer in Norway. Both the seller and the buyer will have an interest in the goods depending on when the right of ownership is transferred. The sales contract will regulate when the transfer of interest occurs. This can be either before, after or during the transit. If the transfer of interest is during the transit, then the insurance contract must initially provide coverage for the seller and once the interest is transferred, provide coverage for the

¹⁴ Ibid. p.138

¹⁵ Ibid. p.142

buyer. The ICC and the CICG contain clauses that regulate and accommodate for this unique situation.¹⁶

The CIGC and the ICC provide the cargo owner with coverage for a number of losses to the cargo. Not all losses are covered, and primarily the CIGC and ICC cover damage, loss and shortage to the cargo. Furthermore the CIGC and the ICC will cover additional costs and expenditures associated with the loss. If the CIGC clauses have been used in unison with a sales contract the seller will be able to claim for any loss in the market price from the point in time when the goods were loaded, whilst the buyer will have a claim in any “charges incurred by him in connection with the shipment, customs duty and other ordinary costs related to the transit, the insurance premium which he is to pay, freight which he has paid or will have to pay and his anticipated profit.”¹⁷ In the case of the ICC profit is not insured, however the assured generally can claim for any advance freight payments and insurance premium payments.¹⁸

Cargo Insurance coverage is limited due to the fact that only the listed perils or non excluded perils are covered. Therefore in regard to the ICC and the CIGC, cover is limited to what kind of loss has occurred and what peril has caused the loss. Coverage will not be provided if an excluded peril has caused the loss and coverage will not be provided if the loss is not within the covered losses.

Following from the peril and loss limitations to cover, there is also the standard principle that coverage will only be provided when the loss is caused by a fortuitous event. This is common for both English and Norwegian Insurance. In the English case *British & Foreign MI Co v Gaunt*, Lord Birkenhead stated “damage, in other words, if it is to be covered by policies such as these, must be due to some fortuitous circumstance or casualty.”¹⁹ In the

¹⁶ 1982 ICC Clause 11.1 and 2004/1994 CIGC Section 9

¹⁷ 1994/2004 CIGC Section 29

¹⁸ Brown, Robert H., *Marine Insurance Volume Two Cargo Practice fifth ed.* (1998 Witherby London) p.5-6

¹⁹ 1921 AC 41, 47, cf. Rose, F. D., McMeel, G., Watterson, S., *Marine Insurance: Law and Practice* (2004 Informa Professional London)

commentary to the CICG the term an unforeseen event is used instead of a fortuitous event, however it is the same principle.²⁰

Now that the basics have been laid out, I will separate the remainder of the chapter into sections defining cargo and the interest insured, period of coverage, the perils covered and the losses covered.

4.2 Interest Insured

The Interest Insured is first and foremost the cargo owner's interest in the cargo. However cargo can be many things, therefore what is cargo in relation to the CICG and the ICC? The CICG commentary states that "goods can be virtually anything: typical goods for resale, a machine that is being moved from one production site to another for the same company, a specially designed part of a bridge span, live farmed fish or a trotting horse."²¹ However it is important to note that certain types of goods may require special needs therefore additional clauses may be needed to accommodate these.

The definition of cargo is similar within the ICC.²² However the ILU have developed a number of individual sets of standard clauses designed to be used with unique cargoes such as oil in bulk, coal, grain and commodity trades such as tea, coffee, sugar, cotton etc (theses set of standard clauses are very similar to the A, B and C Clauses in the ICC)

It must be mentioned that any type of cargo is susceptible to Piracy. However the value of the cargo is an important factor. High valued cargo, for example oil, will be targeted by Pirates that wish to hijack the vessel and hold it for ransom.²³ Though then again there does

²⁰ 1995/2004 Norwegian Cargo Clauses with Commentary' *Marlus nr.331 Scandinavian Institute for Maritime Law* p. 253

²¹ Ibid. p.248

²² Brown, Robert H. Vol. 2 1998 p.2

²³ An example the Saudi VLCC Sirius Star November 2008

not seem to be any real pattern, as there are examples of cargo vessels and fishing vessels being captured for ransom as well.²⁴

Both the ICC and CICG cover the assureds' interest in liability costs and expenses caused by the cargo involved with salvage operations and acts of General Average.²⁵ The ICC will also cover the assured interest in liability expenses associated with the both to blame collision clause if incorporated into the Contract of Affreightment (CoA).²⁶

4.3 Period of Coverage

In the CICG the Insurance period is regulated within Chapter 5. Cargo Insurance is unique as it is commonly issued for the transit in question, therefore the length of the voyage constitutes the insurance period. As stated earlier, if the insurances has been issued in unison with a sales contract the seller or buyer will only have coverage when they have an ownership right in the goods. The transfer of rights depends on what has been decided between the parties.²⁷ Section 14 and Section 15 regulate when and where the insurance commences and terminates.

In regard to the ICC the period of coverage is regulated under the section titled Duration. The ICC provides a warehouse to warehouse cover and covers the assured whilst he/she has an insurable interest in the cargo from the warehouse where the adventure initiates, any initial forms of transport to the seaport, the overseas voyage and then any subsequent forms of transport to the final warehouse or written destination. Similar to the CICG, the ICC is designed to be coordinated with sales contracts, therefore the seller or the buyer only is assured when he/she has an insurable interest (right of ownership) in the goods, this transition is regulated within the sales contract.²⁸

²⁴ Larson, B. 2009 .p.6

²⁵ 1994/2004 CICG Sections 39 and 40

²⁶ 1982 ICC clause 3

²⁷ The INCOTERMS developed by International Chamber of Commerce are commonly used within the industry to decide when the risk will pass between seller and buyer.

²⁸ Brown, Robert H. Vol.2 1998 p.9-10

4.4 Perils Covered

The CICG and the ICC have a similar structure in their method of covering perils. Both forms of Cargo Insurance are set up using three different breadths of coverage, A-Clauses, B-Clauses and C-Clauses. A-Clauses provide an All Risk Policy, where as B and C Clauses provide a Named Peril Policy, C Clauses being the more limited of the two.

As the name suggests, All Risk insurance covers all perils unless they are explicitly excluded. In the CIGG the exclusions are listed in Sections 17, 18 and 19 and in the ICC they are listed in Clauses 4, 5, 6 and 7. To be able to understand the extent of coverage under the All Risk principle it is important to look over the listed exclusions.

The B Clauses are Named Peril Policies. This means that coverage is only provided for losses caused by the perils listed in the policy. It is important to note that the same exclusions as in A Clauses still apply. The CIGG lists nine perils under §4 that are covered and the ICC lists 10 perils that are covered in clause 1.

The C Clauses are almost the same as the B Clauses, however are more limited. The CIGG lists 5 perils, whilst the ICC lists 7. The exclusions, as in A and B Clauses, apply for the C Clauses in both the CIGG and the ICC.

4.5 Loses Covered

The CIGG covers total loss in §35, shortage in §36 and damage in §37. It also encompasses expenses and liabilities associated with measures to avert and minimize loss. These are §39 salvage measures and §40 General Average. The insurer can avoid paying additional expenses associated with measures to avert and minimize loss by compensating the assured with the sum insured; however the assured must be notified before any actions of minimizing and averting loss are implemented.²⁹ This is important as the insurer may avoid paying large General Average contributions to cover ransom payments by implementing this measure. Further for loss to be compensated the loss or damage must be

²⁹1995/2004 Norwegian Cargo Clauses with Commentary p.345

of a physical nature, a failure to describe, for an example in a bill of lading, the quantity or quality of the goods will not count as loss or damage.³⁰

The ICC covers total loss, damage, liability expenses associated with efforts to minimize loss that are acts of salvage and General Average and liability expenses associated with a “both to blame collision clause.” This is written in ICC Risks covered clauses 1, 2 and 3.

5 Piracy as an Insured Peril

5.1 Introduction

Piracy is an elusive term and it must be defined in the context of where it is used. Depending on the context Piracy can be defined differently. Elements of Piracy such as what actions constitute Piracy, what motives must an individual have to be a Pirate and where an act of Piracy can occur may be different, for an example Piracy can be constructed differently from a criminal, insurance and commercial viewpoint.

Defining the term Piracy is important from an Insurance aspect as it is the definition that guides the insurer and the assured to what actions are covered and what are not.³¹ Piracy can intertwine in meaning with a number of actions such as war or warlike conditions and terrorism. Terrorism for an example is commonly covered by the war insurer and therefore an objective distinction has to be made between Piracy a Marine Peril and Terrorism a War Peril. Establishing a definition for Piracy in the CICG and in the ICC is amongst the first step to understanding the coverage for Piracy.

³⁰ Ibid. p.254

³¹ Thomas, D.R. “Insuring the Risk of Maritime Piracy,” *The Journal of International Maritime Law* Vol 10 Issue 4 Aug.-Sep. 2004 p.356

A different method will be used to discover the meaning of Piracy in the CICG and the ICC. This is due to the fact that Piracy is negatively defined in the CICG and positively defined in the ICC.

5.2 Defining Piracy in the CICG

The Method for defining Piracy in the CICG will begin with an analysis of the clauses in the contract. The term Piracy is not mentioned within the clauses furthermore the assisting commentary does not mention the word Piracy and either does the ICA. Therefore an analysis of Norwegian case law and statutes related to other issues may be required to shed some light on the matter. However this last step does not need to be considered.

The CICG as well as the ICC are constructed as All Risk Policies, the B and C Clauses being the exception. The All Risk Policy means that Piracy will be covered as a peril as long as it does not come within the Exclusions. There are eleven Exclusions listed in §18, some of which have very similar meanings to that of Piracy, these include terrorism and war or warlike conditions. The method for defining Piracy in the CICG will be done through a process of defining the Exclusions in §18 and clarifying any overlap between the general meaning of Piracy³² and any closely related perils.

5.3 Defining Piracy in the ICC

In comparison to the CICG the term Piracy is mentioned within the ICC clauses. It is not mentioned within the list of covered perils in the B and C Clauses but is mentioned peculiarly in the exclusions for the A-Clauses. Clause 6.2 of the A Clauses states “*In no case shall this insurance cover loss damage or expense caused by capture, seizure, arrest restraint or detainment (**piracy excepted**) and the consequences thereof or ant attempt thereat.*” From Clause 6.2 it can be interpreted that Piracy has an objectively defined

³² The 1982 UNCLOS definition for Piracy in Article 101 will be used as the general meaning for Piracy

meaning in the ICC. The meaning will need to be discovered from English case law and related statutes, in particular the MIA.³³

Even though the meaning for Piracy can be positively defined from English case law, the term Piracy still needs to be used in the context of the ICC. As mentioned above the ICC A-Clauses are an All Risk Policy. Though Piracy is exempted from exclusion 6.2 there is still the possibility that the meaning for Piracy can overlap with the other exclusions in the ICC clauses 4, 5, 6 and 7. This aspect will be analysed further in Chapter 6.3.2.

6 Coverage for Piracy

6.1 Introduction

This chapter will provide the basis for this paper. It will be an analysis of the peril Piracy and the ICC and CICG clauses. It will begin with an introduction to the A, B and C Clauses and the status of Piracy in comparison to the covered perils and the exclusions. Then using the method outlined in chapter 5 the term Piracy will be defined. This will be followed by an analysis of the coverage provided for Piracy in the B and C Clauses and an analysis of the issue of a combination of perils and causation.

6.2 Piracy and the A, B and C Clauses

Piracy will be a covered peril in the ICC and CICG A-Clauses All Risk Policy, unless it is mentioned within the exclusions, for an example war or warlike condition, terrorism and labour disturbance. Ignoring the listed exclusions, All Risk cover is limited due to the exclusion for non-fortuitous event that seems to be common in both English and Norwegian Insurance Law; nonetheless an Act of Piracy will almost always be considered a fortuitous event.

³³ It is stated in 1982 ICC Clause 19 that “this insurance is subject to English Law and Practice.”

The B and C Clauses are named peril policies, therefore only the perils listed are covered. In both the ICC and the CICG B and C Clauses Piracy is not listed as a covered Peril. In the CIGG the listed B Clause perils are:

- “1)The carrying vessel having collided, struck any object, sunk, capsized or suffered a similar serious accident,
- 2) IRRELEVANT TO DO WITH LAND CONVEYANCE,
- 3) IRRELEVANT TO DO WITH AIRCRAFT,
- 4) Fire, lightning or explosion,
- 5) Earthquake, volcanic eruption, landslide, snow slide or similar perils,
- 6) The goods being jettisoned or washed overboard,
- 7) Sea, lake or river water entering into warehouse or place of storage,
- 8) Loading or unloading of the insured goods, resulting in the total loss of entire packages,
- 9) Loading, unloading or shifting of the insured goods in a port of distress, and theft or precipitation while the goods are stored in a port of distress.”

In the ICC the listed B Clause perils are:

- “1.1.1) Fire or explosion,
- 1.1.2) vessel or craft being stranded grounded sunk or capsized,
- 1.1.3) IRRELEVANT TO DO WITH LAND CONVEYANCE,
- 1.1.4) collision or contact of vessel craft or conveyance with any external object other than water,
- 1.1.5) discharge of cargo at a port of distress,
- 1.1.6) earthquake volcanic eruption or lightning,
- 1.2.1) general average sacrifice,
- 1.2.2) jettison or washing overboard,
- 1.2.3) entry of sea lake or river water into vessel craft hold conveyance container lift van or place of storage,

1,3) total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft.”

The C Clauses for the CICG and the ICC are the same as their corresponding B Clauses, however a number of perils have been removed.

Piracy is not listed as a covered peril in the B and C Clauses; however there is the possibility that Piracy may be covered as a contributing peril to the perils listed above. The extent of this coverage depends on whether the apportionment rule or the proximate rule is used to establish causation. This topic will be discussed later in Chapter 6.4.

6.3 Exclusions

This section will analyse the exclusions in CIG §18 and ICC clauses 4, 5, 6 and 7. In regard to the All Risk principle, the exclusions are the primary source in determining what perils are covered and what are not. The exclusions in the B and C Clauses play a similar role; however due to the named peril principle they do not determine the outcome to the extent as in the A Clauses.

In §18 of the CIG Piracy is not stated as an exclusion, the same follows in ICC clauses 4, 5, 6 and 7 (6.2 will be discussed shortly). However there are a number of terms in the exclusions that can be closely associated with the term Piracy and their meanings may overlap.

It was written previously in Chapter 5 of this paper that a different method will be used in analysing the exclusions of the CIG and the ICC. The reason for this, as stated earlier, is that in the CIG the exclusions delimit the meaning of Piracy whereas in the ICC the meaning of Piracy delimits the exclusions in particular exclusion number 6.2. Therefore the exclusions will be analysed separately, beginning with the CIG.

6.3.1 Exclusions §18, CICG

In the CICG it is not necessarily important how Piracy is defined. Piracy will be covered, that is under the A Clauses, as long as the definition does not overlap in meaning with any of the exclusions. Therefore it is important to understand what the exclusions within §18 encompass.

Before analysing the exclusion I wish to remind the reader of the UNCLOS definition for Piracy, which is:

“any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or aircraft, and directed:

- i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;*
- ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state.”*

I will use the UNCLOS definition as a basis or general meaning in order to see in what aspects the exclusion in §18 will alter the general meaning of piracy.

Within §18 there are 11 listed exclusions. Exclusion number 1 states *“this insurance shall not cover loss or damage caused by: the inherent nature of the goods or their condition at the commencement of the voyage.”* This exclusion is irrelevant in relation to Piracy, since Piracy and the inherent nature of the goods cannot be defined as a similar or single peril.

Exclusion number 2 states *“this insurance shall not cover loss or damage caused by: ordinary loss in weight or volume.”* Again this is irrelevant for the same reasons as exclusion number 1.

Exclusion number 3 states *“this insurance shall not cover loss or damage caused by: protest actions, riots, strikes, lockout, sabotage, acts of terrorism or similar occurrences,*

unless a special agreement regarding cover has been concluded.” This exclusion is extremely important and delimits the definition for piracy on one extremely important point and that is to do with motive.

Protest actions are defined within the commentary to the CICG to be “any action that actually prevents the transit from being carried out. It is irrelevant whether the protest action in question is aimed specifically at the insured transit.”³⁴ The wording “any action” needs to be interpreted restrictively to any act of protest. Protest is defined within the English Oxford dictionary to be the expression of strong disagreement with or opposition to something. This is not the Norwegian definition of protest however I would presume that the English and Norwegian definitions are very similar.

The meaning of a Protest Action may overlap with the UNCLOS meaning for Piracy. The commentary to the CICG does not state that an act of protest cannot be an illegal act, an act of violence or an act detaining the vessel.³⁵ The important difference is that an act of protest should be limited to a protest for political or social motives, whereas an act of piracy is committed for private ends. However this difference is not clear from the commentary and it may be concluded that any action that can be interpreted as a protest action will not be covered, this includes acts of barratry.

The next exclusion within §18 no.3 is riot. **Riot** is defined to be an act that causes “unrest or violence in the streets which is directed against the country’s official authorities.”³⁶ When using the UNCLOS definition for Piracy there is no overlap in meaning between a Riot Act and an Act of Piracy. An Act of Piracy is an act of violence or detention or any act of depredation against a vessel or people or cargo on board the vessel.³⁷ It is not an intended act against a country’s official authorities, however a vessel may be a government

³⁴ 1995/2004 Norwegian Cargo Clauses with Commentary p. 307

³⁵ Ibid.

³⁶ Ibid.

³⁷ 1982 UNCLOS Article 101

owned vessel. Nevertheless the definition for riot is limited to the geographical location of the streets not on the Sea or the High Seas for that matter.

Strike and Piracy do not overlap in their meaning, however a strike may contribute to the likely hood of an act of piracy occurring. This scenario develops a causation problem; however this will be discussed later.

There is not an overlap between the meaning of piracy and the word lockout. **Lockout** is “a situation when an employer refuses to allow workers into their place of work until they agree to various conditions.”³⁸

Three of the most important exclusions are **sabotage, terrorism** and **similar occurrences**. The commentary states that “these terms primarily cover the wilful destruction of objects, perpetrated for a political, social or similar purpose.” The definition for Piracy provided by UNCLOS states that the act must be for private ends.³⁹ The term private can mean a number of things, however in this context it would mean acts that are not involved with state affairs. This infers that there is not any overlap between Acts of Piracy and terrorism or sabotage as it is the motive that distinguishes between the two.

This raises the next question how does one distinguish between political or social motive and other motives? Political within the Oxford dictionary is defined as 1) connected with the state, government or public affairs, 2) connected with the different groups working in politics, especially their policies and the competition between them. Social is defined as 1) connected with society and the way it is organised, 2) connected with your position in society. These definitions can be broad depending on how one interprets them. Furthermore it becomes complicated when the distinction must be made in scenarios where the facts will

³⁸ Oxford dictionary

³⁹ 1982 UNCLOS Article 101

not be clear.⁴⁰ For an example Piracy is commonly occurring in areas where there is political and social unrest, such as Somalia or Nigeria.

If there is a combination of private and political motives, then it is the evaluated dominant motive that distinguishes the act as Piracy on the one hand or terrorism, sabotage, capture by a State Power on the other hand respectively.⁴¹ However as mentioned above defining which motive is dominant is not an easy task. There was a Norwegian case that was troubled with a similar issue. The passenger vessel Peter Wessel was travelling between Larvik and Fredrikshavn when the police “received two anonymous phone calls stating that there was a bomb on board.”⁴² The vessel had to return to port and the passengers were disembarked. There was a dispute on whether expenses associated with the act should be covered by the Marine or War Insurer. It was decided due to a lack of political or social motive that the marine insurer should cover the expenses.⁴³ What is of importance is the method that the arbitrators incorporated to discover the solution. It was stated that “if there was uncertainty about the identity of the person(s) behind the threat and their motivation, guidance should be sought in the apparent nature of the act and the surrounding circumstances. This assessment should be objective in order to avoid the difficulties of determining the subjective motive for the act.”⁴⁴ Discovering objective factors from the apparent nature of the act and the surrounding circumstances is not always easy and may require a large amount of evidence and insight. In summing up, the distinction between political or social motives and other motives is not easy to determine. Certain factors will have to be analysed carefully to determine the exact motive of the assailants.

Exclusion §18 no. 4 states *“This insurance shall not cover loss or damage caused by: The goods being intended for unlawful purposes, or manufactured through unlawful activities or by unlawful methods. The illegality shall be determined in accordance with the rules in*

⁴⁰ Thomas, D.R. 2004 p. 364

⁴¹ Ibid.

⁴² Wilhelmsen Wilhelmsen, Trine-Lise, ‘Challenges in Modern Marine Insurance of Shipowners’ Interests: Piracy and Terrorism’, *Scandinavian Institute for Maritime Law (2009)* p.14

⁴³ ND 1990.140 NA Peter Wessel cf. NMIP Commentary version 2002 part 1 p. 51

⁴⁴ Ibid.

force at the commencement of the period covered by this insurance in the exporting country, the importing country or any other country through which the assured must have expected the goods to pass.” This exclusion is irrelevant as there is not an overlap in meaning between the unlawful nature of the goods and an Act of Piracy. However this exclusion will be of importance when both perils contribute to the loss, but this will be discussed later in Chapter 6.4 and 6.5.

Exclusion §18 no.5 states *“This insurance shall not cover loss or damage caused by: delay, unless such delay causes a further deterioration of damage otherwise covered under this insurance during the further transit, or unless a special agreement has been concluded regarding cover pursuant to Special Clause no.2.”* Similar to exclusion §18 nos. 1, 2, and 4 there is not an overlap between the meaning of delay and Piracy, nevertheless the exclusion for delay causes problematic causation issues when Piracy and delay are both sources for the loss. But as stated in the prior paragraph, this will be discussed later, particularly in Chapter 7.2.

Exclusion §18 no. 6 states *“This insurance shall not cover loss or damage caused by: war or warlike conditions unless a special agreement regarding cover has been concluded.”* This exclusion for war or warlike conditions becomes particularly important when Acts of Piracy occur in political or social unstable locations. The area of overlap in meaning is larger than may be expected. The CICG defines war “as the organized use of armed force, between states or between states and groups claiming to have or wishing to assume power.” The UNCLOS delimits the motive for an act of Piracy to private ends. The term private as defined earlier excludes motives associated with state affairs. Therefore the distinction between Piracy and war or warlike conditions is similar to Piracy and terrorism or sabotage. The important aspect to grasp is that if the assailants are not state authorities, but are associated with a group claiming or wishing to have state power, their motive is likely to be political, therefore an act of Piracy will be interpreted to be an act of terrorism, sabotage or associated with a war or warlike condition. If an act of Piracy is committed by a state authority then automatically the action is political, therefore excluded from coverage

under exclusion no.3, furthermore the act will be excluded from coverage under exclusion no. 8. Exclusion no.8 will be discussed shortly.

Exclusion §18 no. 7 states “*This insurance shall not cover loss or damage caused by: measures taken against the goods by state authorities.*” Exclusion no.7 covers damage and loss to the goods caused by a requisition, confiscation or any other form of retention of the goods by the state authorities.⁴⁵ There is not an overlap in meaning between the UNCLOS definition for Piracy and measures taken against the goods by state authorities. The reason for this is that the UNCLOS defines Piracy as an illegal act. An action by a state authority will not be illegal, unless the action is committed outside of the jurisdiction of that state and in defiance of international law. Nevertheless an illegal action committed against the goods by a state authority will be defined as a political action. There is however the unique situation that a war vessel captures a vessel in defiance of their state’s orders, rules and regulations and steals the goods. In this case there may be the possibility that this would be considered an Act of Piracy, especially if the crew were motivated by private ends or personal gain, however the act cannot come within the meaning of protest as mentioned in §18 no.3.

Exclusion §18 no. 8 states “*This insurance shall not cover loss or damage caused by: capture at sea, confiscation, requisition and other similar measures against the means of transport, implemented by state authorities.*” The commentary defines capture at sea “when the means of transport... is stopped on the order of a warship or another representative of the state authority concerned, and possibly detained for a shorter or longer period of time. It is normally stipulated that the stoppage or detention must be imposed by the use of physical force or by a threat of such force.”⁴⁶ There is not an overlap in meaning between the UNCLOS definition for Piracy and the definition for capture at sea by a state authority. This is due to the fact that the UNCLOS definition for Piracy states, “Piracy to

⁴⁵ 1995/2004 Norwegian Cargo Clauses with Commentary p.312

⁴⁶ Ibid. p.313

be any illegal acts of violence or detention... by a private vessel.”⁴⁷ The term private vessel prevents a vessel from being associated with a state authority. However there is the unique exception as described in the previous paragraph.

If the International Maritime Bureau (IMB) definition is used instead of the UNCLOS definition as the general meaning for Piracy, then the situation §18 no.8 is different. The IMB states Piracy to be “the act of boarding any vessel with an intent to commit theft or any other crime, and with an intent or capacity to use force in furtherance of that act.” An act of detention by a state authority on the High Seas (outside the 200 nautical mile jurisdiction of any state) will be deemed to be illegal, therefore a crime, unless the act is in conformity with international law. Therefore in relation to the IMB definition for Piracy, capture at sea by a state authority could be deemed to be an act of Piracy. Nonetheless due to exclusion no.8, Piracy in relation to the CICG cannot be any act of detention by a state authority, even if the act is outside the jurisdiction of any state.

Exclusion §18 no. 9 states “*This insurance shall not cover loss or damage caused by: measures hindering the transport operations implemented by state authorities.*” This exclusion is irrelevant as there is not an overlap in meaning between Piracy and measures hindering the transport operations implemented by state authorities. However there is the possibility that a measure hindering the transport operations may expose the vessel to acts of Piracy, this again is a causation issue and will be discussed in Chapters 6.4 and 6.5.

Exclusion §18 no. 10 and 11 state “*this insurance shall not cover loss or damage caused by: release of nuclear energy*” and “*chemical, biological, biochemical or electromagnetic weapons.*” Piracy and these two perils have no similarity in meaning. However in a Piracy scenario there may be a possibility that nuclear energy is released from the vessel, for an example if nuclear material is transported or used to power the vessel. Furthermore there is

⁴⁷ 1982 UNCLOS Article 101

the possibility that pirates may use chemical, biological or electromagnetic weapons. If so, it would be likely that coverage will not be provided.

From the above exclusions it can be presumed that Piracy is not:

- ❖ A protest action
- ❖ Acted on the streets
- ❖ An act inspired by political or social motive
- ❖ An act by a state authority
- ❖ An act where chemical, biological or electromagnetic weapons are used.

Therefore in relation to the CICG Piracy can be any act of violence or detention, or any act of depredation, committed for non political or social benefits and cannot be an act of protest by the crew or the passengers of a private ship or a private aircraft, and directed on the sea against another ship or aircraft, or against persons or property on board such ship or aircraft.

In relation to the CICG Piracy is not limited to the High Seas or outside the jurisdiction of any state. It may occur anywhere on the sea, in port or in inland waters as long as the exclusion for riots does not become applicable.

6.3.2 ICC Exclusions nos. 4, 5, 6 and 7

As mentioned earlier the term Piracy is used in Exclusion clause 6.2, where it is stated “*In no case shall this insurance cover loss damage or expense caused by capture, seizure, restraint or detainment (**piracy excepted**) and the consequences thereof or any attempt thereat.*” From this it can be implied that the drafters to the ICC intended the term Piracy to have a defined meaning.

The definition for Piracy can be discovered from an analysis of English case law and the MIA. To discover the meaning for Piracy from a marine insurance perspective, it is important to analyse cases that are relevant to Marine Insurance, however this does not

mean that the search is limited to such cases and criminal cases also provide aspects that are vital to establishing a basic meaning for Piracy from a Marine Insurance perspective.

The meaning for Piracy seems to be similar if not the same for any form of Marine Insurance issued using the MAR form of policy. The ILU appears to have a monopoly on the standard marine insurance clauses implemented in the MAR form of policy. The ILU drafted the ICC as well as the ITCH and there are many similarities within the clauses and it can be implied that the meaning for Piracy is the same throughout. This means that any legal theory on the meaning for Piracy in relation to the MAR form of Policy is relevant to interpreting the meaning for Piracy in the ICC.

However the ICC has the peculiar character for English Marine Insurance that the A-Clauses are an All Risk Policy. The defined term for Piracy will prevent Piracy from being a part of Exclusion Clause 6.2; however this does not imply that Piracy may overlap in meaning with the remaining Exclusions. It can be stated bluntly that the exclusions found in clauses 4 and 5 do not overlap with the meaning of Piracy as they are to do with, no. 4.1 wilful misconduct of the assured, no.4.2 ordinary wear and tear to the insured matter, no. 4.3 loss or damage caused by the insufficiency or unsuitability of the packaging of the insured matter, no. 4.4 inherent vice or nature of the insured matter, no. 4.5 delay, no. 4.6 insolvency or financial default of the owners, managers, charterers or operators of the vessel, no. 4.7 use of a nuclear weapon and no. 5 unseaworthiness or unfitness of the vessel or craft. The issue of the War and Strike Clauses 6 and 7 is slightly more complicated. The peril Piracy in the ITCH has been developed to avoid any overlap in meaning with the War and Strike Clauses. The War and Strike Clauses in the ITCH are the same as in the ICC, therefore it can be inferred that the meaning for Piracy and exclusion clauses 6 and 7 will not overlap.

6.3.2.1 Defining the Parameters of Piracy

Piracy has been defined in English case law to establish an objective meaning for the peril Piracy in the ICC and the ITCH. In relation to the ICC the definition for Piracy would be

basically the same, however due to the All Risk cover the definition for Piracy in the ICC may be broader and encompass further scenarios. Whether or not these extra scenarios will be covered depends on the fact that they do not overlap in meaning with any of the exclusions. I will avoid analysing such situations and instead describe the parameters for the term Piracy used in the ITCH.

In English case law Piracy has been defined in two different contexts, firstly from a criminal law perspective and secondly from a commercial law perspective. In regard to defining Piracy from a marine insurance perspective it is important to understand the commercial meaning for the term Piracy. Nevertheless cases from the criminal law perspective contribute to providing a basis for defining Piracy from a marine insurance perspective.

One of the first cases involving Piracy was *R. v. Dawson*.⁴⁸ The case did not involve commercial contracts and was purely based on convicting assailants for an Act of Piracy. Sir Charles Hedges defined piracy as a “sea term for robbery, piracy being a robbery committed within the jurisdiction of the admiralty.” He further defined the jurisdiction of the admiralty and stated the jurisdiction included “all seas, and the ports, creeks, and rivers, beneath the first bridges next the sea even unto the higher water mark.”⁴⁹ The Dawson case was particularly important as it provided a basis for interpreting the acts that constituted Piracy and where Piracy could occur geographically.

In the above quotation Sir Charles Hedges mentioned the word robbery. The word robbery is defined within the Oxford Dictionary to be a “crime of stealing money or goods from a bank, shop/ store, person etc. especially using violence or threats.”⁵⁰ Violence and stealing or thefts are elemental in defining piracy in relation to marine insurance. Strangely enough the *R. v. Dawson* case has become more relevant in relation to commercial contracts,

⁴⁸ *R. v. Dawson*. 1696 St. Tr. 5, cf. Miller, Michael D. 2005 p.206

⁴⁹ Ibid p. 208

⁵⁰ Oxford dictionary

therefore marine insurance, than to criminal law. This is because the definition for Piracy in regards to criminal law has been instated into statute. The 1997 Merchant Maritime Security Act defines Piracy using the 1982 UNCLOS definition.⁵¹

From a marine insurance perspective Sir Charles Hedges definition for the geographical limitations of Piracy remained essential until the *1909 Republic of Bolivia v. Indemnity Mutual Marine Insurance Company Ltd* case.⁵² The Republic of Bolivia case was important not only in initiating the delimitation of the geographical area where an Act of Piracy could occur, but also in regard to what motives for robbery constituted an Act of Piracy.

The Republic of Bolivia case concerned insurance coverage for an act of robbery that occurred in the Amazon Basin on the River Acre that was nearby the border between Bolivia and Brazil. The Judges concluded that the act of robbery was not Piracy for two important reasons. Firstly the act of robbery occurred outside the delimitations of an act of Piracy and secondly the act of robbery was motivated by political and social intentions.⁵³

Vaughan Williams L.J., a judge to the Republic of Bolivia case, stated “I do not think that the place where these events happened.... was a place where piracy could be committed.... Piracy is a maritime offence, and what took place on this river... far up country, did not take place on the oceans at all.”⁵⁴ This comment, though preventing regions high upstream in a river from being within the geographical limitations of an Act of Piracy, did not provide the needed comprehensive geographical delimitation for an Act of Piracy. It was the 1982 case *Athens Maritime Enterprises Corporation v. Hellenic Mutual War Risks Association Ltd.* that provided further guidance on the matter. In the Athens Maritime Enterprise case (Andreas Lemon) Straughton J. stated “I cannot accept (the plaintiffs)

⁵¹Michael, Keith. *War, Terror and Carriage by Sea*, (2004 Informa Professional London) p. 128

⁵² *Republic of Bolivia v. Indemnity Mutual Marine Insurance Company Ltd.* 1909 1 K.B. 785; 1909 1 K.B. 792 (C.A.) cf. Miller, Michael D. 2005 p. 214

⁵³ *Republic of Bolivia v. Indemnity Mutual Marine Insurance Company Ltd.* 1909 1 K.B. 785; 1909 1 K.B. 792 (C.A.) cf. Miller, Michael D. 2005 p. 214

⁵⁴ Miller, Michael D. 2005 p. 215

submission that piracy may be committed anywhere within the Common Law jurisdiction of the Court of Admiralty..... In the context of an insurance policy, if a ship is, in the ordinary meaning of the phrase, ‘at sea’, or if the attack upon her can be described as a ‘maritime offence’, then for business purposes of a policy of insurance she is, in my judgement, in a place where piracy can be committed.”⁵⁵ Even this definition is not complete; therefore the court or arbitrators have a degree of discretion on how they interpret the difference between an act of robbery occurring outside the area of the sea and an Act of Piracy occurring within the area of the sea.

The other important factor that was established from the Republic of Bolivia case was to do with motive. Judge Pickford J. sighted Hall’s definition for Piracy that a pirate is “primarily... a man who satisfies his personal greed or his personal vengeance by robbery or murder.”⁵⁶ Vaughan-Williams L.J. agreed with this and stated further “he is not a pirate who operates against the property of a state for a public end, such as setting up a state.”⁵⁷ These two comments delimit the motive for Piracy to acts that do not include political intentions. There was another case in 1923 the *Banque Monetaca & Carystuiaki v. Motor Union Insurance Company Ltd.* that affirmed the decision in the Republic of Bolivia case that an Act of Piracy cannot occur with a political motive.⁵⁸

What acts constitute Piracy? As mentioned above Piracy is an act of robbery on the sea. However robbery can encompass many different actions. The 1906 MIA, under Rules for Construction of Policy number 7, states “the term pirates include passengers who mutiny and rioters who attack the ship from the shore.”⁵⁹ The MIA definition for Piracy was a assembly of the cases *Nesbitt v. Lushington*⁶⁰, where a rioting meal mob were considered to

⁵⁵ *Athens Maritime Enterprises Corporation v. Hellenic Mutual War Risks Association Ltd.* 1982 2 Lloyd’s Rep. 483, cf. Miller, Michael D. 2005 p.218

⁵⁶ Miller, Michael D. 2005 p214 cf. Hall. International Law 5th edition

⁵⁷ *Republic of Bolivia v. Indemnity Mutual Marine Insurance Company Ltd.* 1909 1 K.B. 785; 1909 1 K.B. 792

⁵⁸ Miller, Michael D. 2005 p. 216

⁵⁹ 1908 MIA Rules for Construction of Policy number 8

⁶⁰ *Nesbitt v. Lushington* 1792 4 T. R. 783. Cf. Arnould, *Law of Marine Insurance and Average* 16th Edition volume 2 (1981 Stevens and Sons Ltd. London) p.756

be Pirates and *Attorney General for Our Lady the Queen for the Colony of Hong Kong v. Kwok-a-Sing*⁶¹ where a group of passengers were considered to be Pirates when they mutinied and murdered the master and crew and took the vessel and cargo.

When the MIA was established in 1906 the S.G. Policy form was used and Piracy and riots were covered as War Perils. Since the instalment of the MAR form of policy Piracy is covered as a Marine Peril and riots remains covered as a War Peril.⁶² This means that rioters from the shore cannot be considered as Pirates. On the other hand mutineers can be considered as Pirates, as long as their actions result in robbery. However the term mutiny cannot overlap in meaning with the term labour disturbance, which is an excluded peril in the strike clauses.⁶³ The actions of the crew in such a scenario must be motivated by personal greed and result in personal gain, not motivated by labour related matters.

From precedent it does not seem to matter if the robbery is an act against the vessel or against its cargo, just as long as there is an act of robbery at sea. This is important from a cargo owner's perspective. An act of robbery must constitute some form of violence. Theft acted out clandestinely will not be considered as Piracy. This was highlighted by Straughton J. in the *Andreas Lemon* case.⁶⁴

It was concluded by the Privy Council in defiance of the *Re Piracy Jure Gentium* case that an "actual robbery is not an essential element to the crime of Piracy."⁶⁵ It is enough to discover that the assailants had an intention to perform an Act of Piracy. Therefore if goods are damaged due to an attempted Act of Piracy the goods will still be concluded to be damaged by Piracy not a different peril.

In summing up an act of Piracy from a Marine Insurance perspective is an act:

⁶¹ *Attorney General for Our Lady the Queen for the Colony of Hong Kong v. Kwok-a-Sing*, 1873 L.R. 5 P.C. 179

⁶² Brown, Robert H., vol.2 1998 p.237

⁶³ 1982 ICC Clause 7.2 and 7.2

⁶⁴ Miller, Michael D. 2005 p.218

⁶⁵ *Re Piracy Jure Gentium* 1934 A.C. 586 cf. Miller, Michael D. 2005 p. 216

- ❖ Of robbery that comprises violence and theft.
- ❖ Occurs on the sea, within the jurisdiction of the admiralty, however the court has discretion on the exact limitations
- ❖ It is an act motivated for personal gain
- ❖ It is not an act motivated by political or social intentions and labour relations.

6.3.2.2 Concluding the definition for Piracy, Clause 6.2 and the Exclusions

In the context of the CICG it is simple enough to state that Piracy will be a covered peril under the All Risk A-clause policy as long as the definition does not overlap with the meanings of the Exclusions. In the context of the ICC the situation is different. As stated earlier there is a need to define Piracy in order to avoid Piracy from being considered as exclusion 6.2. The term Piracy will not overlap with the meaning of the other exclusions for reason stated in Chapter 6.3.2. The term Piracy as defined above will be covered under the ICC A-Clauses.

6.4 Rules for Causation and Coverage under the B and C Clauses

The ICC and the CIGG B and C Clauses are structured using the named peril principle. In neither the ICC nor the CIGG is Piracy listed as a covered peril. Therefore the only possibility where damage or loss from an Act of Piracy will be covered is when Piracy combines with a covered peril in causing the loss or damage. Whether or not coverage will be provided depends on which method for determining causation is implemented.

6.4.1 CIGG and Causation

In the CIGG a combination of risks is regulated by §20 where it states,

“if the loss has been caused by a combination of several different risks, and one or more of these risks are not covered by this insurance, the loss shall be apportioned proportionally among the various risks according to the influence which each of them must be assumed to have had on the occurrence and extent of the loss, and the insurer shall only be liable for that part of the loss which is attributable to the risks covered by this insurance. If a risks

*specified in §18, no. 10 or no. 11 has contributed to the loss, however, the entire loss shall be regarded as having been caused by such risk.”*⁶⁶

This method of determining causation is named the “apportionment principle.” The apportionment principle is common within Norwegian Marine Insurance.

The apportionment principle may be applied to situations where a peril initiates another peril that causes the loss, or where two or more perils cause the loss in unison or where a peril causes a loss that results in another peril causing further loss. The apportionment principle also is applicable to the combination of objective perils and subjective perils such as negligence to abide by safety regulations.⁶⁷

In the context of the CICG it might be likely that Piracy combines with a covered peril such as §4 no. 1 collision, no. 4 fire or an explosion, no. 6 the goods being jettisoned or no. 9 the goods being damaged or stolen in a port of distress. If so the coverage for the damage or loss to the goods will be apportioned between the covered perils and the non-covered peril Piracy. The extent of the coverage will be determined through a discretionary decision made by the court or arbitrator based on the “influence each of them (peril) must be assumed to have had on the occurrence.”⁶⁸

There is a limitation to the apportionment rule in §20 second paragraph that states “*if a risk as specified in §18 no. 10 or no. 11 has contributed to the loss, however, the entire loss shall be regarded as having been caused by such risk.*”⁶⁹ This is irrelevant if Piracy is a contributing peril, unless Pirates use “chemical, biological, biochemical or electromagnetic weapons.”⁷⁰ It does not matter whether or not an excluded peril combines with one of the

⁶⁶ 1994/2004 CICG section 20

⁶⁷ Wilhelmsen, Trine-Lise., Bull, Hans Jacob., *Handbook in Hull Insurance*, (Glydendal Norsk Forlag, 2007) p. 112-14

⁶⁸ 1994/ 2004 CICG section 20

⁶⁹ Ibid. Section 20 2nd paragraph

⁷⁰ Ibid. Section 18 no.11

listed covered perils, the apportionment principle will still be applied, §18 no.'s 10 and 11 being the only exceptions.

6.4.2 ICC and Causation

The ICC is slightly more complicated in how the combination of a covered peril and Piracy a non covered peril is regulated. Causation within English marine insurance is regulated in MIA section 55 (1) that states “subject to the provisions of this act, unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against.”⁷¹ Therefore if a combination of perils causes the loss, the insurer will only cover the loss if the insured peril is the proximate cause for the loss. An apportionment principle will not be applied.

The peril Piracy may likely occur in combination with ICC covered perils 1.1.1 fire or explosion, 1.1.2 vessel or craft being stranded, grounded, sunk or capsized, 1.1.4 collision or contact of vessel with an external object other than water, 1.1.5 discharge of cargo at a port of distress or 1.2.2 jettison. If Piracy occurs in unison with fire for an example, then coverage may be provided if fire is interpreted to be the proximate cause of the damage. However in relation to the Exclusion there is a departure from the proximate rule and this is due to the wording in clause 1 that states “*this insurance covers, except as provided in Clauses 4, 5, 6 and 7.*” This implies that the exclusions in clauses 4, 5, 6 and 7 are given express application.⁷² It does not matter whether the exclusion was the proximate cause or not, it is sufficient to determine that it was simply a cause to the loss. This makes it extremely difficult for the assured to attain coverage for loss or damage caused by an Act of Piracy. For an example fire is the proximate cause of damage to the goods; however the fire was initiated by an Act of Piracy. The Act of Piracy would come under exclusion clause 4.7 (B and C Clause 4.7 is not present in the A Clauses) “*deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act*

⁷¹ 1908 MIA Section 55(1)

⁷² Arnould vol 3 p. 122 para 191

of any person or persons.” Therefore due to the express application of exclusion clause 4.7 coverage will not be provided even though fire is considered to be the proximate cause.

6.4.3 Summary of B and C Clauses

In summing up there is the possibility that damage or loss caused by an act of Piracy will be covered under the CIGC B and C Clauses due to the “apportionment principle.” In the case of the ICC, the B and C Clauses do not provide coverage for Piracy due to express application of exclusion clause 4.7 and war exclusion clause 6.2.

6.5 Causation, Combination of Perils and the A-Clauses

Both the ICC and the CIGC A Clauses cover the peril Piracy as defined in chapter 6.2. However what occurs when Piracy combines with an excluded peril?

The same principles as mentioned above in chapter 6.3 apply. That is the apportionment principle in regard to the CIGC and the express exclusion principle in the ICC.

If the peril Piracy combines with an excluded peril in the CIGC then the loss will be apportioned between the extents each peril contributed to the loss. The same follows when the loss has been partially caused by a breach of safety regulation in CIGC §§22, 23 and 24. The only exceptions, as mentioned above, are §18 no. 10 and 11, which have express application and the apportionment principle will not be applied. There is also the unusual case of §18 no.5 delay. However I wish to discuss this in more detail in chapter 7.2.

If the peril Piracy combines with an excluded peril in the ICC then coverage will not be provided, this is due to the fact that the exclusions have express application and any linkage between the loss and the excluded peril will exclude cover.⁷³ There is an exception in regard to exclusion clause 4.5 Delay where the proximate rule is applied; this is due to the

⁷³ibid. p. 122 para 191

wording of the clause that states “*in no case shall this insurance cover loss damage or expense proximately caused by delay.*”⁷⁴

7 Exclusions for Delay and Seaworthiness

7.1 Introduction

This section will analyse two important aspects that will limit coverage for an Act of Piracy. The first aspect is delay. The peril delay can be commonly associated with an Act of Piracy. Delay can occur in combination with Piracy in a number of scenarios including capture of the vessel, attending a port of refuge, and diverting scheduled routes.

The second aspect is seaworthiness. Seaworthiness is regulated in ICC Clause 5 and CIG § 22. It is important for a cargo owner to understand what constitutes seaworthiness and to be aware that the carrier is abiding by requirements that will make the vessel seaworthy.

7.2 Delay

Delay can cause loss or damage to the goods if the goods have an inherent quality that makes them susceptible to damage over time. Delay is an excluded peril in CIG §18 no. 5 that states:

“this insurance shall not cover loss or damage caused by delay, unless such delay causes a further deterioration of damage otherwise covered under this insurance during the further transit, or unless a special agreement has been concluded regarding cover pursuant to special clause no. 2.”

And in ICC clause 4.5 it states,

⁷⁴ 1982 ICC clause 4.5

“in no case shall this insurance cover loss, damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)”

7.2.1 CICG

An Act of Piracy can cause damage to the cargo in two methods. The first method is that Pirates can cause damage to the cargo directly, for an example through weapon fire or an explosion. The second method is that the cargo is detained and causes the cargo to deteriorate. Method 1 will be covered in the CICG A, B and C Clauses if the Act comes within the meaning of Piracy defined in Chapter 6.3.1 and B and C covered peril no. 4 for fire and explosion; however the cargo owner will not receive coverage if damage is caused by method 2, this is due the application of CICG §18 no. 5 Exclusion for delay.⁷⁵

Any form of damage caused to the cargo by delay will not be covered, even if Piracy is the cause for the delay.⁷⁶ §18 no.5 is unique in comparison to the other exclusions listed in §18 in that the apportionment principle will not apply and delay will almost always be considered as the only cause for the loss. However there is a twist in the exclusion, if damage is caused directly to the cargo, for an example as the case of method 1 in the prior paragraph, then any subsequent damage to the goods caused by delay will be considered as further damage to the initial cause. In other words the entire loss will be evaluated to be caused by the peril Piracy and coverage will be provided even if a large portion of the loss was caused subsequently by delay.⁷⁷

In practice a cargo owner may have to deal with the issue of delay when the carrying vessel has been captured by Pirates, the vessel is forced to divert to a longer transit in order to avoid a Piracy attack or the vessel is forced to attend a port of refuge. Unfortunately for the cargo owner any loss caused to the cargo in such situations will not be covered unless Pirates inflict damage to the goods as described in Method 1 above.

⁷⁵ '1995/2004 Norwegian Cargo Clauses with Commentary' p. 309

⁷⁶ Ibid.

⁷⁷ Ibid. p.310

7.2.2 ICC

The ICC is different to the CICG in that delay must be evaluated to be the proximate cause for the loss. If it can be determined that delay is the proximate cause then coverage will not be provided.⁷⁸ This form of causation allows for the opportunity that damage caused by delay may be covered when the delay is caused by an Act of Piracy. The outcome will depend on the facts of the case and that Piracy can be considered using “common sense and reasonable judgement”⁷⁹ to be the dominant cause for the loss. In my opinion if the vessel is captured by Pirates, then Piracy will be considered to be the proximate cause for the loss as there is a clear chain of causation between Piracy causing delay and therefore damage.⁸⁰ In the case of attending a port of refuge the result may not be so clear, especially if the cargo owner has the opportunity to transport the cargo on another vessel from the port of refuge. In the case of diversion the outcome will depend on how immediate the threat of Piracy is to the cargo.

7.2.3 General Average and Salvage

Both the CICG and the ICC cover General Average contributions caused by an Act of Piracy.⁸¹ However damage or loss caused by delay because of the act will not be covered, that is if the 1994 York Antwerp Rules (YAR) are applied. Rule C of the YAR states “any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be admitted as General Average.”⁸²

There is an interesting statement in ICC clause 4.5 that states “in no case shall this insurance cover loss damage or expense proximately caused by delay.... (except expenses

⁷⁸ Brown, Robert H., vol. 2 1998 p. 177

⁷⁹ *J.J. Lloyd Instruments Ltd. v. Northern Star Insurance Company Ltd.* 1985 1 Lloyd’s Rep. 264 cf. Miller, Michael D. 2005 p. 343

⁸⁰ *Boudrett v. Hentigg* 1816 Holt’s Rep. 149 “The ship carrying the insured goods was wrecked. Some of the goods were saved but, before they could be taken away, they were stolen. They were held to be a total loss by perils of the seas” cf. Miller, Michael D. 2005 p. 346

⁸¹ 1994/2004 CIGG covers Piracy as a cause to measure to avert and minimize loss in the A, B and C Clauses in the 1982 ICC coverage is only provided in the A Clauses.

⁸² 1994 York Antwerp Rules Rule C

payable under clause 2). Clause 2 of the ICC states “This Insurance covers general average and salvage charges.....incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7.” It is difficult to grasp the drafters’ intentions when they included the words “except expenses payable under clause 2.” Arnould states the words are intended to exempt clause 4.5 delay from the exclusions for causing a General Average Act or an Act of Salvage. Arnould further highlights that the possibility of delay causing a General Average Act is very low if not impossible, as delay will rarely threaten the existence of both the vessel and the cargo.⁸³ There is the possibility that a Salvage effort is requested to save the cargo from damage or loss caused by delay. If the requirements for an Act of Salvage are met then the Salvage expenses borne by the assured will be compensated by the insurer. Such an Act of Salvage may be required to save the cargo from damage caused by delay if the vessel becomes inoperable after an act of Piracy or from a port of refuge caused by an Act of Piracy. General Average Acts and Acts of Salvage caused by delay will not be covered in the CICG due to the wording in §§39 and 40.

7.3 Seaworthiness

The CIGC and the ICC will not cover any loss caused by or attributable to the unseaworthiness of the vessel. The issue is regulated in CIGC §§22 and in ICC Exclusion Clause 5. The next three sub chapters will discuss the topic of seaworthiness.

7.3.1 Seaworthiness and the CIGC

The CIGC has not incorporated the term seaworthiness, but instead uses the term safety regulations, however the principle remains similar in §22. §22 is the relevant regulation associated with the prevention of an Act of Piracy. It makes the assured responsible for the neglect of the carrier for providing an unsuitable means of transport. §22 states:

“the assured shall ensure that the goods are carried by a means of transport or in a container that is suitable for the transit.”

⁸³ Arnould, vol. 3 1981 p.142

The important limitation to this rule is that the assured must be aware that the carrier has provided an unsuitable means of transport.⁸⁴ If the assured is unaware coverage will still be provided.

The commentary to the CICG states that a transport is not suitable “if, even under normal transport conditions, the goods may be expected to sustain a certain type of damage which they would not have sustained if another means of transport had been chosen.”⁸⁵ This means if the vessel is not equipped to travel in Pirate prone areas and the vessel is subsequently attacked, coverage may not be provided depending on whether or not the vessel would have been attacked if it was equipped with the necessary precautionary measures.

The general concept provided in §21 that states “*if a safety regulation is infringed, the insurer shall only be liable to the extent that it is proved that the loss is not a consequence of the infringement or that the infringement cannot be imputed to the assured*” is also applicable to §22.

In §22 there is no requirement that the vessel may only be considered unsuitable at the beginning of the voyage. I would presume, since there is no mention within §22 and within the commentary on the issue, that it would be resolved in a similar method as in Norwegian Hull Insurance. In Hull Insurance if an accident occurs and it is discovered that the vessel was unsuitable at that point in time, then the exclusion from coverage becomes applicable.⁸⁶

7.3.2 Seaworthiness and the ICC

The ICC provides an express exclusion from coverage in clause 5.1 for the seaworthiness of the carrying vessel. If the vessel is determined to be unseaworthy then coverage will not

⁸⁴ Ibid. p. 325

⁸⁵ Ibid. p. 326

⁸⁶ Wilhelmsen, Trine-Lise., Bull, Hans Jacob. 2007 p. 139

be provided. This exclusion also encompasses the seaworthiness of any conveyance, container and lift van involved in the transit of the goods.⁸⁷

Seaworthiness is defined in MIA §39 (4) where it states “a ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.” The term is relatively subjective and will change due to what perils may be seen as normal for the voyage in question. Lord Cairns stated in *Steel v. State Lines* that a seaworthy vessel “should be in a condition to encounter whatever perils of the sea a ship of that kind, and laden in that way, may be fairly expected to encounter.”⁸⁸ Therefore a vessel travelling within or just outside Somali territorial waters should be equipped to encounter the possibility of an Act of Piracy. Furthermore seaworthiness is not limited to the physical condition or structure of the vessel but also incorporates the sufficiency and competency of her officers and crew.⁸⁹ In relation to Piracy this would mean that the Master and the crew are trained and knowledgeable on the safety measures to handle or avoid an Act of Piracy.

The seaworthiness exclusion clause is limited to the assured being privy to the unseaworthiness of the vessel. The term privy is explained in *Arnould* to be where the “assured and his servants have knowledge at the relevant time of the facts which render the vessel unseaworthy or unfit for the carriage of the cargo, and either know that those facts render her unseaworthy or unfit for the carriage of the cargo or suspect that they do so and turn a blind eye to their implications.”⁹⁰

Within the Seaworthiness Exclusion Clause 5, there are two variants of the concept of seaworthiness. Firstly there is the express exclusion in clause 5.1 and secondly there is the incorporation of the MIA warranty for seaworthiness in clause 5.2. The two definitions for

⁸⁷ 1982 ICC Clause 5

⁸⁸ *Steel v. State Lines SS. Co.* (1877) 3 App.Cas 72 cf. *Arnould*, vol. 2 p. 569

⁸⁹ *Ibid.* p.576

⁹⁰ *Arnould*, vol. 3 1981 p. 148 paragraph 236

seaworthiness are conceptually the same, however there are differences.⁹¹ In relation to Piracy these differences are practically of little importance. It is enough to state that if the vessel is not seaworthy when the cargo is loaded and the cargo owner is privy to this then coverage will be excluded. This is also relevant if the transit consists of a number of individual voyages, each vessel performing the separate individual voyages must be seaworthy when the cargo is loaded upon that vessel.⁹²

7.3.3 Seaworthiness and Piracy

What warrants a vessel seaworthy in relation to Piracy? The definitions for seaworthiness in the CICG §22 and the ICC clause 5 are general, subjective and non specific; nonetheless it can be presumed that safety regulations that are incorporated into national legislation are the minimum requirements that a ship owner must abide to make a vessel seaworthy.

The International Maritime Organisation (IMO), Safety of Life at Sea (SOLAS) convention that has been ratified by a 159 states provides a number of standards that must be abided in order to avoid violent acts against the vessel.⁹³ Particularly the International Code for the Security of Ships and Port Facilities (ISPS), an addition to the SOLAS, is of special importance. If the requirements of the ISPS Code are not met it would be unlikely that the vessel would be considered seaworthy.

Furthermore in Norway there is the 2007 Ship Safety Act and in Europe including England there is the 2004 EC Regulation on Enhancing Ship and Port Facility Security. If the rules presented are not met, then it would be unlikely that a vessel would be considered seaworthy.

The status of guidelines and advisories established by International Organizations and other Organizations involved in the trade are more circumstantial. There are a number of guidelines and advisories in circulation within the Shipping Industry to prevent an Act of

⁹¹ Brown, Robert H., vol. 2 1998 p. 215

⁹² Ibid.

⁹³ IMO http://www.imo.org/Conventions/mainframe.asp?topic_id=247 (accessed 18/09/09)

Piracy. These include the June 2009 IMO ‘Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery against Ships’ and the February 2009 ‘Best Management Practices to Deter Piracy in the Gulf of Aden and the Coast of Somalia.’ The Best Management Practices has been supported by a number of credible Organizations such as the IMB, Baltic and International Maritime Organisation (BIMCO), INTERTANKO, International Group of P&I Clubs and International Union of Marine Insurers. Furthermore there has been the request for vessels passing in high risk areas to report to security stations aimed at preventing Pirate attacks, for an example the Horn of Africa Maritime Security Station.⁹⁴ If a carrier does not abide by these guidelines and advisories it would be unlikely that the vessel would be considered unseaworthy. However there is the possibility in English Law that abiding by such guidelines may be considered customary in the trade to avoid Piracy.⁹⁵ If that is the case then a vessel not abiding by such guidelines may be considered unseaworthy. Nonetheless if the insurer wishes to become certain that guidelines and advisories become a condition for seaworthiness they will have to include them into the Insurance policy.

8 Piracy and Measures to Avert and Minimize Loss

8.1 Introduction

Apart from the loss, damage and shortage cover provided, the CICG and ICC also cover costs and expenses associated with an act to avert and minimize loss. This is important for a cargo owner as the cargo owner will have to contribute to any costs or expenses burdened by the carrier or ship owner as well as any liabilities and expenses caused directly against the cargo after performing and act to avert and minimize loss.

⁹⁴ BIMCO https://www.bimco.org/Members%20Area/News/General_News/2009/03/24_piracyadvisory.aspx (accessed 11/09/09)

⁹⁵ Arnould, vol 2 1981 p. 574

Particular actions that can be considered an act to avert and minimize loss caused by an Act of Piracy are attending a port of refuge, diverting course, expenses associated with evading boarding Pirates and ransom payments.

8.2 Legal Theory

Both the ICC and the CICG provide a duty for the assured to act reasonably to avert and minimise loss.⁹⁶

Cost and expenses associated with such actions are covered under ICC A, B and C Clauses clause 2 that states

“this insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from cause except those excluded in Clauses 4, 5, 6 and 7 or elsewhere in this insurance.”

And in the CICG measures to avert and minimize loss are covered under §39 Salvage Charges that states

“the insurer shall be liable for the assured’s salvage charges in accordance with section 6-4 of the Insurance Contracts Act, unless the provisions of §40 are applied. In the case of an international transit, including transit from the Norwegian Continental Shelf, the Insurer shall not be liable for the Assured’s liability for loss caused to a third party.”

And §40 General Average Contributions that states

“The Insurer shall be liable for general average contribution apportioned on the basis of the interest insured, if the general average act was undertaken on account of the risks covered by this insurance or ensuing from §6, fourth paragraph. The contribution is

⁹⁶ 1982 ICC clause 16 and 1994/2004 CICG section 25

recoverable on the basis of a general average adjustment, properly drawn up according to the rule of law applicable or to such terms and conditions as may be considered customary in the trade in question.”

Furthermore in CIG §6 it states that General Average Contributions under the B and C Clauses are not restricted to the listed covered perils and the insurer will indemnify the assured for General Average Contributions caused by all perils apart from those excluded in §§17, 18 and 19.⁹⁷ This means that General Average Contributions caused by an Act of Piracy will be covered in the B and C Clauses.

8.3 General Average

Under the A-Clauses General Average contributions caused by an act of Piracy will be covered in both the ICC and the CIG. The same will follow for the B and C Clauses in the CIG due to the wording of §6. However the ICC B and C Clauses will not cover General Average Contributions, firstly because of exclusion clauses 4.7 and 6.2 and secondly because MIA section 66(6) states “in the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against.”⁹⁸

From the wording of the General Average Clause in the ICC A Clauses and CIG A, B and C Clauses it can be understood that General Average Contributions caused by an act of Piracy will be covered. However can an act of Piracy cause a General Average Act?

The rules governing a General Average Act are usually implemented into the CoA. ICC Clause 2 makes reference to this stating “this insurance covers General Average and Salvage Charges, adjusted or determined according to the CoA and/or the governing law.”⁹⁹ The CIG states in §40 “the insurer shall be liable for General Average

⁹⁷ 1995/ 2004 CIG Section 6 4th paragraph

⁹⁸ MIA section 66 (6) cf. Hudson, N.G., Madge, T. *Marine Insurance Clauses fourth edition*, (Informa Professional London 2005) p. 17

⁹⁹ 1982 ICC Clause 2

Contribution..... properly drawn up according to the rules of law applicable or to such terms and conditions as may be considered customary in the trade in question.”¹⁰⁰ If by chance the CoA does not state the rules governing a General Average Act, then the law governing the CoA will regulate which rules shall become applicable. Generally the law that governs issues arising from a CoA is the law of the location where the goods are discharged. In English Law this principle arose from the case *Simonds v. White*¹⁰¹ and in Norwegian Law it is stated in Section 253 paragraph 2 nos. 2 & 3 of the 1994 Norwegian Maritime Code.

The common rules that govern a General Average Act are the YAR rules. Norwegian Law has incorporated these rules into statute in section 461 of the 1994 Norwegian Maritime Code. In English Law the YAR rules have become a form of *lex mercatoria* acknowledged to be the rules regulating a General Average Act.¹⁰²

YAR Rule A sets out the main principle guiding a General Average Act. Rule A States “there is a General Average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.”¹⁰³

According to YAR Rule A, in order for a General Average act to occur there are a number of factors that need to be fulfilled. These factors are 1) preserve the property from peril, 2) the property must be involved in a common maritime adventure, 3) there must be an extraordinary sacrifice for the common benefit of all interests involved in the adventure and 4) the action must be reasonably and intentionally executed.

1) Preserving the Property from Peril

¹⁰⁰1994/2004 CIGG Section 40

¹⁰¹*Simonds v. White* (1824) 2 B. & C. 811 cf. Hudson, N.G., Madge, T. 2005 p. 17

¹⁰²Rose, F.D. *General Average Law and Practice 2nd Edition*, (2005 Informa Professional London) p.11 para 1.26

¹⁰³1994 YAR Rule A Maritime cf. Falkanger, T., Bull, H.J, Brautaset, L. 2004 p.471

The act must be undertaken to preserve the property from peril. The peril must be threatening the very existence of the property.¹⁰⁴ It does not matter if the peril is threatening to occur or has occurred. An ample method to judge whether or not a peril is sufficiently threatening, is to ask whether the sacrifice was the only means of averting the peril from causing total loss to the vessel and its cargo?¹⁰⁵

It would seem certain that an act of Piracy will threaten the very existence of the cargo and the vessel. Piracy by definition is a violent act of stealing aimed at a vessel and its cargo. An act of Piracy may often consist of the vessel or its cargo being captured, destroyed or stolen.

2) The Property Must be Involved in a Common Maritime Adventure

A common maritime adventure is a voyage initiated for the benefit of more than one interest. For a General Average act to occur the peril must be threatening all of the common interests.¹⁰⁶ As Cooke and Cornah state that “if a total loss of ship and cargo cannot be envisaged, it is doubtful whether the peril is sufficient to constitute a General Average.”¹⁰⁷

In Maritime trade it is common that the ship owner and the cargo owner are separate individuals or entities. Therefore if there is cargo onboard it is likely that there is more than one interest in the voyage and the voyage will be considered a common maritime adventure. There is no doubt that a hijacking of the vessel by Pirates threatens the existence of the entire common maritime adventure. However if Pirates board the vessel with the intention purely to steal the cargo, then it may be considered only a threat to the cargo. Whether or not the Act of Piracy is considered a threat to the common maritime adventure will depend on the facts of the case.

3) There must be an Extraordinary Sacrifice for the Common Benefit of all the Interests Involved in the Adventure.

The sacrifice must be of an extraordinary nature. A sacrifice is not an extraordinary sacrifice if it is within the “ordinary duties and expenses of the navigation.”¹⁰⁸

If an act of Piracy is threatening to occur or has occurred it would be likely that all sacrifices would be outside the “ordinary duties and expenses of the navigation,” therefore seen to be extraordinary. This is due to the peculiar and violent nature of Piracy, however the shipping

¹⁰⁴ Cooke, J.H.S. Cornah R.R. *The Law of General Average and the York-Antwerp Rules 13th edition* (2008 Sweet & Maxwell London)p.91

¹⁰⁵ Rose, F. D., 2005 p. 22

¹⁰⁶ *ibid.* p. 24

¹⁰⁷ Cooke, J.H.S. Cornah R.R. 2008 p.91

¹⁰⁸ Arnould, vol. 2 1981 p.807

community is becoming more and more aware of the consequences of Piracy and guidelines and requirements are being introduced, for an example the IMB Guide lines for vessel travelling outside of Somalia.¹⁰⁹ It is up for consideration if a Master making sacrifices to abide by international or national guidelines and requirements in order to avert an Act of Piracy could be considered outside of the “ordinary duties and expenses of the navigation.”

Sacrifices associated with piracy that can be considered extraordinary are acts of jettison in order to lighten and remove inhibitors to the vessel or hamper attackers,¹¹⁰ sacrifice a part of the vessel for similar reasons,¹¹¹ abnormal use of the vessel or its equipment to prevent attackers from threatening the vessel or its cargo¹¹² and expenses associated with efforts to find a missing vessel and its cargo.¹¹³

Sacrifices that may be considered extraordinary are expenses associated with a Port of Refugee and Ransom payments. These two are slightly more complicated and require an amount of deliberation. The case of ransom payments is slightly easier. Expenses associated with a Port of Refuge will be discussed in more detail below.

Ransom payments will be incurred by the cargo owner when Pirates have hijacked the cargo together with the vessel. Ransom payments will generally be covered as extraordinary expenditures associated with preserving the property from peril; this is due to the fact that ransom payments are requested with a threat to the very existence of that which is captured.¹¹⁴

4) The Action Must be Reasonably and Intentionally Executed.

The term reasonable means that the sacrifice must have been a sensible measure concerning the factors of the situation.¹¹⁵ If the sacrifice was wasteful and unnecessary it cannot be considered reasonable. The term intentional means that the sacrifice was an act of free will and with the objective of preserving the common adventure from peril.¹¹⁶ The master cannot be forced to act under duress.¹¹⁷

In relation to ransom the opinion has been raised that when a ransom payment is requested, the ransomee is forced to pay the sum, therefore the act does not fulfil requirement of being

¹⁰⁹ Talley W.K., *Maritime Security, Security and Piracy* (2008 Informa Professional London) p. 92

¹¹⁰ Arnould, vol.2 1981 p.812

¹¹¹ *ibid.* p. 818

¹¹² *ibid.* p. 822

¹¹³ Wilhelmsen, Trine-Lise, 2009 p.36

¹¹⁴ Arnould, vol.2 1981 p.854

¹¹⁵ Rose, F. D., 2005 p.44

¹¹⁶ *ibid.* p. 42

¹¹⁷ Wilhelmsen, Trine-Lise, (2009) p.36

intentional.¹¹⁸ Furthermore the act of paying a ransom can be considered as unreasonable. Ransom payments are usually considered as the final option, especially if all other possibilities have been exhausted. There is also the issue of whether or not a ransom payment is considered as illegal, this will depend on the law governing the contract or where the Act is undertaken.¹¹⁹ Whether or not a ransom payment is considered as reasonable will depend on an analysis of these issues.

Port of Refuge

The issue of expenses associated with entering a port of refuge is important from a cargo owner perspective. The cargo owner may be burdened with a number of expenses, if not covered by General Average contributions, such as damage to the cargo caused by delay and warehousing fees. Therefore I wish to contribute a section to analysing this issue.

The issue is of importance in relation to Piracy, since a vessel may have to attend a port of refuge due to the peril Piracy. This may be due to damage to the vessel or the cargo caused by an Act of Piracy, fulfilling police or security requirements after an Act of Piracy or attending a port of refuge due to a serious and imminent threat of a Piracy attack.

Expenses associated with entering a port of refuge will generally be covered under General Average as an extraordinary sacrifice.¹²⁰ However entering a port of refuge encompasses many costs not only for the ship owner but also for the cargo owner and not all costs will be covered by a General Average Contribution. From a cargo owner perspective, the cargo will endure costs associated with unloading and loading of the cargo to and from the vessel, port fees, warehousing fees, survey expenses, handling expenses, outward dues and possibly expenses associated with a deferred transit.

General Average will cover all direct expenses associated with entering a port of refuge from the time the decision is made to enter the port of refuge until the vessel is ready to

¹¹⁸ Ibid.

¹¹⁹ 1994 YAR Rules, Rule of Interpretation

¹²⁰ Arnould, vol. 2 p. 831

resume its original course.¹²¹ This means that the General Average Contributions will cover costs involved with the cargo being unloaded, stored/ warehoused, surveyed, handled, shifted, loaded, port fees, outward fees and any damage caused by such actions.¹²² However the General Average contributions will not cover any costs associated with the inherent quality of the goods and any costs of preventing or maintaining the goods due to their inherent quality.¹²³ These costs may be covered under the ICC and CICG A-Clauses due to the exceptions in the Exclusion clauses for delay.

The issue of costs for entering a port of refuge is further complicated under English Law, where English average adjusters have diverted in their method of covering costs under a General Average Act. There is a differentiation between covered costs associated with a port of refuge sought because of damage caused by a Particular Average incident and that sought because of damage caused by a General Average incident. If damaged is caused by a particular average incident and a port of refuge is sought, then costs of warehousing the cargo will be the cargo owners burden and the costs of reloading and outward port fees will be charged as additional freight.¹²⁴

8.4 Salvage

If the conditions for General Average are not fulfilled, for an example if the threat is only directed to the goods then the assured has the possibility that the costs for averting and minimizing loss will be covered as salvage charges. The CICG covers salvage charges under §39 and the ICC covers salvage charges under Clause 2.

The term salvage charges are defined differently between the CICG and the ICC. The definition for salvage charges in the CICG is more encompassing than that provided in the ICC.

¹²¹ Selmer, K.S., *The Survival of General Average: a Necessity or an Anachronism* (1958 Grondahl & Son, Oslo) p.245

¹²² *ibid.* p. 247

¹²³ *Ibid.* p. 247

¹²⁴ Arnould, vol. 2 1981 p.832-3

8.4.1 Salvage and the CICG

The definition for salvage in the CICG is linked to ICA §6-4, where it is stated “the insurer is liable for damages, liabilities, expenses and other losses incurred by the assured in circumstances as mentioned in section 4-10 (when the insured material is in imminent danger), when the measures were intended to avert or minimize losses covered by the insurance, and the measures were of an extraordinary nature and must be regarded as justifiable.” This definition encompasses all extraordinary and justifiable costs, expenses and liabilities associated with an act to avert and minimize loss from an imminent danger.

¹²⁵ In relation to Piracy salvage charges may be costs involved with search and rescue efforts, ransom payments and third party liabilities associated with a rescue attempt (as will be mentioned latter, third party liabilities are only covered on domestic voyages within Norway.)

The term extraordinary should be defined in the same way as in General Average, in that the actions are “outside the normal duties and expenses of navigation.” An action is justifiable when the costs of measures to avert and minimize loss will be less than the loss or damage from the peril that the action is attempting to avert. This will be subjectively tested based on how the Master of the vessel or those caring for the cargo interpreted the costs in the moment when the imminent danger occurred.¹²⁶

Imminent danger does not seem to be as restrictive as the term “preserving from peril” in the YAR Rule A for General Average. It is not necessary the peril is threatening the very existence of the cargo, it is enough that the peril is threatening to cause some form of damage.¹²⁷

The CICG will only cover salvage charges that are associated with measures to avert and minimize loss from a covered peril. This means that under the B and C Clauses only

¹²⁵ ‘1995/2004 Norwegian Cargo Clauses with Commentary p. 363

¹²⁶ Ibid. p. 364

¹²⁷ Ibid. p. 364

salvage charges caused by the listed perils in §§4 and 5 will be covered, therefore Piracy is excluded. In relation to the A–Clauses it will cover all perils apart from those excluded in §18, Piracy is included.

Salvage charges in the CICG covers similar damages, costs and expenses as General Average contributions; however there are two points of differentiation. The first, as mentioned earlier, is that the Act of Piracy must threaten to damage the cargo whereas in an act of General Average the Act of Piracy must threaten the very existence of the cargo. In practice it is rare that an Act of Piracy does not threaten the very existence of the cargo, nonetheless if it is determined that the Act of Piracy did not threaten the existence of the cargo any damages, costs or expenses associated with an act to avert and minimize loss will be covered as salvage charges. The second point is that salvage charges will cover any damages, costs and expenses associated with measures to avert and minimize loss when the cargo is not part of a common maritime adventure or that the acts were undertaken for the benefit of the cargo. This is relevant if Pirates only intend to steal the cargo or the cargo is removed from the vessel and held for ransom either from another vessel or from a location a shore.

An important limitation for salvage charges is that the cargo insurer will not cover third party liabilities if the measures to avert and minimize loss are performed on an international voyage.¹²⁸ This may be relevant if a salver suffers damage or expenses during the act of salving the cargo. In relation to Piracy the most likely scenario is that the carrier suffers damages or expenses attempting to avert and minimize loss to the cargo caused by an Act of Piracy. The cargo owner will have to pay for such expenses when 1) the voyage is international, 2) the pirates only intended to steal the cargo and 3) the CoA does not make the carrier liable.

¹²⁸ 1995/2004 CICG Section 39

8.4.2 Salvage and the ICC

The term salvage charges in the ICC is defined in section 65 (2) of the MIA, where it states “salvage charges means the charges recoverable under Maritime Law by a salver independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them for the purpose of averting a peril insured against.” As the definition states, salvage charges in the context of the ICC are limited to charges and expenses awarded through the rules of Maritime Law, to a third party that has salvaged the property without a contract. The rules governing the amount payable will depend on the Maritime Law governing the CoA or the Maritime Law where the salvage operation occurs.

The principle of salvage in the ICC is that the owner and members of the salver vessel may demand compensation from the owner of the property salvaged, the term property in this case includes cargo.¹²⁹ If Pirates steal the cargo and the cargo is later salvaged the salver will have a claim from the Cargo Owner. If the cargo and vessel are considered as one entity (cargo carried inside the vessel) the salver can still claim apportioned compensation from both the ship owner and the cargo owner.¹³⁰

Salvage charges incurred due to an Act of Piracy will only be covered under the A-Clauses. This is due to the wording of Clause 2 that states “This insurance covers ... salvage charges....from any cause except those excluded in Clauses 4, 5, 6 and 7.” Clauses 4.7 and 6.2 in the B and C Clauses exclude Piracy from coverage.

In relation to Piracy an act of salvage will be relevant when a third party assists a distressed vessel in an act to avert and minimize loss. This may be a reality when a nearby vessel

¹²⁹ 1989 International Convention on Salvage Article 1 (a) “for the purpose of this convention salvage operation means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.”

¹³⁰ *The Unique Mariner* (no.1) 1 Lloyd’s Rep. 348 at 450, per Brandon J. 1978 cf. Brice, G. *Brice on Maritime Law of Salvage*, ed. Reeder, J. (Sweet & Maxwell Ltd. 2003) p.333

attends a distress signal and deters a Piracy attack or prevents Pirates damaging or stealing the cargo.

Not all vessels can claim a salvage reward; this is relevant in relation to acts of salvage performed by Navy and public authorities or the carrier. This issue will be discussed in the preceding paragraphs.

It is possible under English Law, for Navy or public vessels to claim salvage from the cargo owner, however the act of salvage must be considered outside the public duty of the vessel and its crew.¹³¹ Public duty is regulated in the concept of voluntariness. A Salvage Act cannot be conducted involuntarily.¹³² Salvage acts by Navy or public vessel are usually considered to be involuntary, especially if their duties consist of preserving the safety of maritime vessels.¹³³ There are a number of conflicting cases on this point,¹³⁴ however the outcome in relation to Piracy as mentioned above must be evaluated from the duties of the vessel. A rescue effort conducted by the European Union Naval Forces situated in Somalia whose duty is to protect transiting vessels in the region¹³⁵ would unlikely be considered as an act of salvage. On the other hand if a UK Naval vessel is conducting war like exercises and happens to assist a vessel being attacked by Pirates this may be considered outside of the duties of the vessel and a salvage award may be claimed. It must be noted that this outcome is regulated under English Law and other laws may have different outcomes.

On the issue of the carrier, it would be unlikely that the cargo owner would be covered for any expenses owed to the carrier for their salvage effort caused by Piracy. This is due to the existence of a CoA. The term independent of contract in the MIA is not as restrictive as it

¹³¹ It is stated in the 1995 Merchant Shipping Act, if "salvage services are rendered by or on behalf of her Majesty.... her Majesty shall be entitled to claim salvage in respect of those services as any other salvor." Cf. Brice, G. 2003 p.70

¹³² Brice, G. 2003 p. 67

¹³³ Ibid. p.72

¹³⁴ *Belle* 1809 165 E.R. 'The vessel Belle was salved from danger by a naval officer, the act was considered to be within his public duties no salvage was awarded.' *Alma* 1861 167 E.R. 162, 164 'A naval ship was awarded salvage charges after salving a damaged vessel.' Cf. Brice, G. 2003 p71

¹³⁵ EU NAVFOR Somalia <http://www.mschoa.org/> (accessed 22/09/09)

may seem and there is lee way on this issue.¹³⁶ However the parties to the CoA should be aware that the issue of salvage can be regulated within the contract, therefore even if the CoA states nothing on the matter of salvage or carrier responsibilities in preventing an act against the cargo, the CoA should still be considered as a contract in MIA Section 65(2).

9 Conclusion

To conclude, I will present two tables below, one on the CICG and one on the ICC, of the possible losses caused by Piracy and under what conditions, A, B or C Clauses they will be covered.

The tables illustrate that the coverage is generally broader in the CIGC due to a number of losses associated with Piracy being covered in the B and C Clauses. The reason for the limited cover in the ICC B and C Clauses is due to the express provision of clauses 4.7 and 6.2. The A Clauses for both the ICC and the CIGC provide very similar coverage; the only two issues of divergence is that the CIGC applies the apportionment principle, therefore there is the possibility that the cargo owner will receive some form of coverage if Piracy combines with an excluded peril. The other issue is to do with the extent of coverage for measures to avert and minimize loss; this is due to the different interpretations of the term salvage. In relation to Piracy the most comprehensive forms of coverage are the ICC and CIGC A Clauses. The distinction between the two is minimal.

There are two issues that would be of interest for further study. The first issue is on how to define a political motive. In many circumstances this is a very difficult thing to do. It would be of interest to do a political study on Pirate prone regions and create a link between Acts of Piracy and the political situation within the region. There is most probably a current

¹³⁶ Arnould, vol. 2 1981 p.783 para 911

connection between political instability and Piracy in Somalia.¹³⁷ Any facts indicating at a connection could prevent coverage for Piracy.

The second issue is to do with seaworthiness. As mentioned earlier in the text, seaworthiness is a vague term and it is difficult to define exactly what makes a vessel seaworthy. Many different rules or regulations may come within an assembly of measures that a ship owner must abide by to make a vessel seaworthy. It would be of interest to do a further study in what exactly determines a vessel to be seaworthy when travelling in Piracy prone areas.

¹³⁷Lloydshttp://www.lloyds.com/News_Centre/Features_from_Lloyds/News_and_features_2009/360/Piracy_problem_persists_in_gulf_of_aden_200809.htm (accessed 24/08/08)

Table 1 CICG

CICG	A CLAUSES	B CLAUSES	C CLAUSES
TOTAL LOSS (STOLEN)	YES	NO	NO
TOTAL LOSS (DELAY)	NO	NO	NO
TOTAL LOSS (FIRE EXPLOSION)	YES	YES	YES
TOTAL LOSS (USE OF WEAPON IF NOT CONSIDERED FIRE OR EXPLOSION)	YES	NO	NO
DAMAGE (DELAY)	NO	NO	NO
DAMAGE (FIRE EXPLOSION)	YES	YES	YES
DAMAGE (USE OF WEAPON IF NOT CONSIDERED FIRE OR EXPLOSION)	YES	NO	NO
TOTAL LOSS OR DAMAGE CAUSED BY NUCLEAR OR CHEMICAL WEAPON	NO	NO	NO
RANSOM EXPENSES	YES	YES (If considered General Average)	YES (If considered General Average)
SEARCH AND RESCUE EXPENSES	YES	YES (If considered General Average)	YES (If considered General Average)
DAMAGE OR LOSS TO THE CARGO OR THE VESSEL IN A MEASURE TO AVERT AND MINIMIZE LOSS	YES	YES (If considered General Average)	YES (If considered General Average.)
COSTS ASSOCIATED WITH A PORT OF REFUGE	YES	YES (If considered General Average)	YES (If considered General Average)
DIVERSION COSTS (IF THREAT IS IMMINENT)	YES	YES (If considered General Average.)	YES (If considered General Average)

Table 2 ICC

ICC	A CLAUSES	B CLAUSES	C CLAUSES
TOTAL LOSS (STOLEN)	YES	NO	NO
TOTAL LOSS (DELAY)	NO (If proximate cause)	NO	NO
TOTAL LOSS (FIRE EXPLOSION)	YES	NO	NO
TOTAL LOSS (USE OF WEAPON IF NOT CONSIDERED FIRE OR EXPLOSION)	YES	NO	NO
DAMAGE (DELAY)	NO (If proximate cause)	NO	NO
DAMAGE (FIRE EXPLOSION)	YES	NO	NO
DAMAGE (USE OF WEAPON IF NOT CONSIDERED FIRE OR EXPLOSION)	YES	NO	NO
TOTAL LOSS OR DAMAGE CAUSED BY NUCLEAR OR CHEMICAL WEAPON	NO	NO	NO
RANSOM EXPENSES	YES (If considered General Average)	NO	NO
SEARCH AND RESCUE EXPENSES	YES (If considered General Average)	NO	NO
DAMAGE OR LOSS TO THE CARGO OR THE VESSEL IN A MEASURE TO AVERT AND MINIMIZE LOSS	YES (If considered General Average)	NO	NO
COSTS ASSOCIATED WITH A PORT OF REFUGE	YES (If considered General Average)	NO	NO
DIVERSION COSTS (IF THREAT IS IMMINENT)	YES	NO	NO

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Annexes

2004 Norwegian Cargo Clauses

Norwegian Cargo Clauses:

Conditions relating to Insurance for the Carriage of Goods of 1995

Version 2004

CEFOR Form No. 261

Translation of the original Norwegian text.

In case of conflict, the latter shall prevail.

Issued by

The Central Union of Marine Underwriters (CEFOR), Oslo, Norway

October 2004

Chapter 1. Introductory provisions

§ 1. Definitions

For the purpose of these conditions:

1. **Loss** means pecuniary loss of any kind, including total loss, shortage, damage, loss of earnings, charges and liability, cf., however, the exclusions in § 6, third paragraph.
2. **Damage** means physical damage that does not constitute total loss or shortage.
3. **Transport document** means a Bill of Lading or other document giving title to the goods in transit.
4. **Insurance document** means the document issued as evidence of insurance in connection with an individual transit.

Chapter 2. Scope of the insurance

§ 2. Risks covered by the insurance

Insurance may be contracted for one of the following types of cover:

1. All risks - "A-Clauses", cf. § 3.
2. Extended transport accident - "B-Clauses", cf. § 4.
3. Transport accident - "C-Clauses", cf. § 5.

Unless otherwise stated in the Policy, the insurance shall be deemed to have been effected as A-Clauses insurance.

§ 3. All risks - A-Clauses

Subject to the exclusions specified in §§ 17, 18 and 19, A-Clauses insurance covers all risks of loss or damage to which the insured goods are exposed.

§ 4. Extended transport accident - B-Clauses

Subject to the exclusions ensuing from §§ 17, 18 and 19, B-Clauses insurance covers the following risks to which the insured goods are exposed:

1. The carrying vessel having collided, struck any object, sunk, capsized or suffered a similar serious accident.
2. The land conveyance having collided, struck any object, overturned, been derailed or been driven off the road.
3. The aircraft having collided, struck any object, crashed or been driven off the runway.
4. Fire, lightning or explosion.
5. Earthquake, volcanic eruption, landslide, snowslide or similar natural disasters.
6. The goods being jettisoned or washed overboard.
7. Sea, lake or river water entering into warehouse or place of storage.
8. Loading or unloading of the insured goods, resulting in the total loss of entire packages.
9. Loading, unloading or shifting of the insured goods in a port of distress, and theft or precipitation while the goods are stored in a port of distress.

§ 5. Transport accident - C-Clauses

Subject to the exclusions specified in §§ 17, 18 and 19, C-clauses insurance covers the following risks to which the insured goods are exposed:

1. The carrying vessel having collided, struck any object, sunk, capsized, or suffered a similar serious accident.
2. The land conveyance having collided, struck any object, overturned, derailed or been driven off the road.
3. The aircraft having collided, struck any object, crashed or been driven off the runway.
4. Fire, lightning or explosion.
5. Earthquake, volcanic eruption, landslide, snowslide or similar natural disasters.

§ 6. Losses covered by the insurance

This insurance covers the following losses:

1. Total loss, cf. § 35.
2. Shortage, cf. § 36.
3. Damage, cf. § 37.

This insurance also covers the following charges:

1. Salvage charges, cf. § 39.
2. General average contribution, cf. § 40.
3. Charges related to provision of security, cf. § 41.
4. Litigation charges, cf. § 42.
5. Charges in connection with settlement of claims, cf. § 43.

Unless otherwise specially agreed, the Insurer shall not be liable for:

1. General capital loss, including loss of time, loss due to economic fluctuations, loss of market, operating loss and similar losses.
2. Liability to third parties incurred by the Assured.

In the case of B-Clauses insurance, cf. § 4, or C-Clauses insurance, cf. § 5, the insurance shall also cover general average contributions (cf. § 40) and general average sacrifice

which have not been caused by a risk covered by the insurance, unless the said risk is excluded by §§ 17, 18 and 19.

§ 7. Causal connection

This insurance covers loss due to the effect on the insured goods of a risk that is covered by the insurance during the period of insurance.

§ 8. Burden of proof

The burden of proving that he has suffered a loss which is covered by this insurance, as well as the extent of the loss, falls upon the Assured.

The burden of proving that a loss has been caused by a risk that is excluded by the clauses falls upon the Insurer.

Chapter 3. Interests comprised by the insurance - Identification.

§ 9. Interests comprised by the insurance

If nothing has been specified as to whose interest is covered by this insurance, it shall inure to the benefit of the person effecting the insurance and persons to whom he has transferred title to or a security in the goods, provided such security has been established through assignment of a transport document for the goods. *If the insurance has been effected by the seller, and the sales contract and appurtenant terms of delivery or a special agreement do not state that the buyer's or other subsequent owners' interest in the goods is to be covered by the insurance, the insurance does not cover these persons' interest in the goods.*

If the person effecting the insurance neither has nor will have any interest in the capital value of the goods, this insurance shall be deemed to be effected, unless otherwise follows from the circumstances, for the benefit of the seller and for persons who obtain title to the goods from him.

If the Assured is both shipper and consignee of the goods, he may, in the event of a casualty, elect to invoke the rules pertaining either to the cover of the seller's interest or to the cover of the buyer's interest. If he chooses the latter, however, he may not claim for losses as specified in § 29, second paragraph, *litra e*.

Except for what is provided in the first paragraph, this insurance shall not inure to the benefit of the holder of a lien or any similar registered security as specified in § 7-1, third paragraph, of the Insurance Contracts Act.

§ 10. Identification

The Insurer may, in respect of the Assured, plead that the right to compensation for loss of or damage to goods has been forfeited wholly or partly as a consequence of an act or an omission by:

- a) Management personnel employed by one of the Assured parties responsible for the transport of the goods.
- b) The person effecting the insurance or former owner of the goods. It is not a condition that the person in question was owner at the time of the omission, provided that the goods were in his charge or in the charge of a person acting on his behalf.

In the event of a breach of the safety regulations in §§ 22, 23 or 24, or of a safety regulation laid down by the Insurer pursuant to § 21 and incorporated in the Policy, the Insurer may also invoke an act or omission by other persons who have been engaged to organize the transport.

§ 11. The Insurer's objections in relation to a bona fide holder of the insurance document

When the insurance document has been issued and delivered to the Assured, the Insurer may not contend that:

1. The insurance contract has subsequently been amended or cancelled.
2. The insurance cover has lapsed owing to non-payment of the insurance premium.
3. The right to compensation has been forfeited wholly or partly as a consequence of an act or omission by a previous owner. This shall not apply, however, when the person effecting the insurance has neglected his duty of disclosure, cf. § 12.
4. A claim for premiums or other claims against the person effecting the insurance may be set off against the compensation.
5. Compensation has already been paid.

The Insurer may, however, raise objections if the Assured, when the insurance document was delivered to him, knew or ought to have known of the matter upon which the objection is based.

Chapter 4. Duty of disclosure

§ 12. Duty of disclosure of the person effecting the insurance

In connection with the conclusion or renewal of the insurance contract, the Insurer may ask for information concerning circumstances which may have a bearing on his assessment of the risk. The person effecting the insurance shall reply fully and correctly to the Insurer's inquiries. The person effecting the insurance shall also on his own initiative inform the Insurer of special circumstances which he must

understand have a substantial bearing on the Insurer's assessment of the risk.

Should the person effecting the insurance at any time become aware that he has provided incorrect or incomplete information concerning the risk, he shall without undue delay inform the Insurer of this.

§ 13. Duty of disclosure of a third party

If this insurance comprises the interest of a third party, and if the third party knows that the insurance has been or will be effected, the third party shall have the same duty of disclosure as the person effecting the insurance, cf. § 12.

In the event that the third party infringes his duty of disclosure pursuant to the first paragraph, § 4-2 of the Insurance Contracts Act shall apply correspondingly.

Chapter 5. Period of insurance

§ 14. Commencement of the period of insurance

If this insurance has been effected by the seller, the Insurer's liability shall attach from the time the goods are moved for direct loading into the means of transport which shall convey them from the warehouse or place at which the insured transit shall commence.

If the buyer has effected this insurance, or if it has been expressly stated that the insurance only covers the buyer's interest, the Insurer's liability shall attach when the risk passes to the buyer in accordance with the sales contract, or when an insurance effected by the seller in accordance with the sales contract terminates.

If this insurance covers only the buyer's interest, the Insurer shall also be liable for any loss incurred by the buyer because a transport document which he has taken up in good faith does not contain information concerning shortage or damage suffered by the goods after the time specified in the *first* paragraph.

§ 15. Termination of the period of insurance

The liability of the Insurer shall terminate:

- 1) when the goods have been safely unloaded from the means of transport which carried them to the consignee's warehouse at the named place of destination, or
 - 2) if the goods are not to be placed in the consignee's warehouse at the named place of destination, when the goods are delivered to the *consignee* or otherwise placed at his disposal, or
 - 3) when the carrier, in accordance with the terms of the contract of affreightment, has sold the goods for the account of the Assured and the risk has passed to the buyer, or
 - 4) at 2400 hours local time on the 30th day following completion of discharge of the goods at the named place of destination,
 - 5) at 2400 hours local time on the 60th day following discharge of the goods from the ship which transported them to the agreed port of discharge,
- whichever shall first occur.

§ 16. Suspension of the insurance

This insurance shall be suspended if the goods are delayed in one place for more than 15 days due to circumstances within the control of the Assured. The insurance shall again become operative from the time physical measures are implemented to start or resume the transit.

If the goods are delayed in transit for more than three months in one place, this insurance shall be suspended during the additional period of delay, unless the delay is caused by:

1. Damage or loss covered by this insurance, theft or piracy.
2. Damage to other goods carried by the means of transport.
3. The means of transport in which the goods are loaded having suffered a casualty, disappeared or been abandoned.
4. Harbours or transit routes having been destroyed or blocked.

Chapter 6. Exclusions - Combination of several risks

§ 17. Deck cargo

If the goods are insured as deck cargo and are carried on deck, the Insurer shall not be liable for:

1. Loss caused by precipitation or seawater.
2. Loss caused by dirt or sparks which do not cause a fire.
3. Loss arising from the shifting of cargo in transit, except when the insured goods fall overboard.
4. Loss caused by confusion with or leakage from other cargo.

Losses as specified in the first paragraph shall nonetheless be covered under this insurance if they are caused by a fire or an explosion, or by the vessel having struck a fixed or floating object.

If goods which are insured as under deck cargo are carried on deck, and the person effecting the insurance knew or should have known this, the first and second paragraphs shall apply correspondingly.

If goods are transported in a sealed container, they shall be regarded as under deck cargo regardless of whether or not the container in question is carried on deck.

§ 18. Risks excluded

This insurance shall not cover loss or damage caused by:

1. The inherent nature of the goods or their condition at the commencement of the period covered by this insurance.
2. Ordinary loss in weight or volume.
3. Protest actions, riots, strikes, lockout, sabotage, *acts of terrorism* or similar occurrences, unless a *special agreement regarding cover has been concluded*.
4. The goods being intended for unlawful purposes, or manufactured through unlawful activities or by unlawful methods. The illegality shall be determined in accordance with the rules in force at the commencement of the period covered by this insurance in the exporting country, the importing country or any other country through which the Assured must have expected the goods to pass.
5. Delay, unless such delay causes a further deterioration of damage otherwise covered under this insurance during the further transit, or unless a special agreement has been concluded regarding cover pursuant to Special Clause No. 2.
6. War or warlike conditions *unless a special agreement regarding cover has been concluded*.
7. Measures taken against the goods by State authorities.
8. Capture at sea, confiscation, requisition and other similar measures against the means of transport, implemented by State authorities.
9. Measures hindering the transport operations, implemented by State authorities.
10. Release of nuclear energy.
11. *Chemical, biological, biochemical or electromagnetic weapons.*

§19. Condensation and other effects of changes in temperature

The Insurer shall not be liable for loss or damage caused by condensation or the effects of changes in temperature, unless the loss or damage is caused by:

- 1) the means of transport or the cargo having suffered a casualty after the goods were loaded into the means of transport,
- 2) the goods having been sent by a means of transport or in a container which were unfit for the carriage of the insured goods, cf., however, § 22,
- 3) insufficient or inadequate protective measures having been taken by the carrier,
- 4) fire, lightning or explosion.

If the goods were carried or should have been carried in a thermoregulated means of transport or container, the Insurer shall nonetheless only be liable for loss or damage caused by condensation or effects of changes in temperature, if the loss or damage is caused by:

- 1) the means of transport having suffered a casualty as specified in § 4, nos. 1 - 3, after the goods were loaded into the means of transport or container,
- 2) fire, lightning or explosion,
- 3) the machinery which regulates the temperature having suffered a casualty after the goods were loaded into the means of transport or container, and consequently been inoperative for a continuous period of at least six hours.

§ 20. Combination of risks

If the loss has been caused by a combination of several different risks, and one or more of these risks are not covered by this insurance, the loss shall be apportioned proportionally among the various risks according to the influence which each of them must be assumed to have had on the occurrence and extent of the loss, and the Insurer shall only be liable for that part of the loss which is attributable to the risks covered by this insurance.

If a risk as specified in § 18, no. 10 *or no. 11*, has contributed to the loss, however, the entire loss shall be regarded as having been caused by such risk.

Chapter 7. Safety regulations

§ 21. General rules

The safety regulations set out in §§ 22 to 24 and the regulations otherwise laid down by the Insurer and which are set out in the Policy shall apply to this insurance. In the case of international transits, moreover, all regulations and injunctions concerning measures for the prevention of loss, issued by public authorities, shall be regarded as safety regulations. *Section 1-2 (e) of the ICA has been departed from, cf. Section 1-3, second paragraph, letter (e) of the Act.*

If a safety regulation is infringed, the Insurer shall only be liable to the extent that it is proved that the loss is not a consequence of the infringement or that the infringement cannot be imputed to the Assured.

§ 22. Unsuitable means of transport

The Assured shall ensure that the goods are carried by a means of transport or in a container that is suitable for the transit.

§ 23. Marking and packing of goods

The following information shall be clearly indicated on each package:

1. The name and address of the shipper and the consignee.
2. Which side of the package is "up" or "down".
3. The degree of danger of hazardous goods, indicated by international symbols.
4. The centre of gravity of the package.
5. Lifting instructions.

If the nature of the goods so requires, each package shall also be marked with special instructions for handling the goods, e.g. that they shall be handled with special care, or that they shall not be subjected to specific types of influence, such as damp, heat, blows, jolts, and the like.

The goods shall be marked in Norwegian. In the case of international transits, the goods shall also be marked in English.

The goods shall be packed, packaged and protected to enable them to withstand ordinary, foreseeable stresses during transport.

§ 24. Goods carried in thermoregulated means of transport

In addition to § 23, the following safety regulations shall apply to goods which are carried in thermoregulated means of transport:

1. The thermoregulated means of transport shall have attained the temperature required for the transit before the goods are loaded into it, and the shipper shall as far as possible order the carrier to monitor the temperature every third hour during the transit.
2. The temperature of the goods at the time of loading shall be the same as the transit temperature, and the loading and transit temperature shall be stated in the waybill.
3. Prior to commencement of the transit, the shipper shall if possible ensure that the cargo hold or container has no holes and does not leak, that the cargo hold or container has been cleaned and is odourless, and that doors and packing are sealed.
4. Goods shall be stowed so compactly that they are prevented from slipping, but not such as to block the circulation of air, especially under the ceiling, down along the doors and back along the floor.

Chapter 8. Salvage measures, abandonment and completion of the transit

§ 25. Duty of the Assured to minimise losses

If there is imminent danger that loss or damage will occur, or has occurred, the Assured shall do what may reasonably be expected of him to avert or minimise the loss. If the Insurer issues specific instructions, he shall comply with them, unless he must understand that they have been issued on the basis of incorrect or incomplete information about the actual situation.

If loss or damage has occurred, the Assured shall without undue delay notify the Insurer. He shall keep the Insurer informed of further developments, and notify him of any maritime inquiry or surveys at which it might be important for the Insurer to be represented.

If the transit is interrupted, the Assured shall without undue delay notify the Insurer and take measures within his ability to bring about a resumption of the transit.

§ 26. The Insurer's liability if the Assured neglects his duties

If the Assured has wilfully or through gross negligence failed to fulfil his duties pursuant to § 25, the Insurer shall not be liable for a greater loss than that for which it may be assumed he would have been liable if the duty had been fulfilled.

§ 27. Abandonment of the transit on the Insurer's demand

The Insurer may demand that the transit to the named place of destination shall be abandoned if further transit:

1. Cannot take place without extraordinary risk of loss of the goods or considerable damage to them, such loss or damage being recoverable under this insurance.
2. Will entail unreasonable additional charges for the Insurer.
3. Cannot be expected to be completed after having been delayed for at least 30 days.

§ 28. Completion of the transit on the Insurer's demand

The Insurer may demand that the transit to the named place of destination shall be completed unless, due to damage recoverable under this insurance which the goods have sustained, or which it must be feared they will sustain during further transit, it is deemed unsafe to forward them to the destination.

Chapter 9. Insurable value

§ 29. Insurable value

Unless otherwise agreed, the insurable value shall be deemed to be the market value of the goods at the place of loading at the inception of this insurance. If the goods are sold, the market price shall be calculated on the basis of the invoice value.

If compensation for the goods is payable to the buyer, the insurable value shall, if applicable, also include:

- (a) charges incurred by him in connection with the shipment,

- (b) *customs duty and other ordinary costs related to the transit,*
- (c) the insurance premium which he is to pay,
- (d) freight which he has paid or will have to pay,
- (e) his anticipated profit. Unless otherwise agreed, the insurable value of such anticipated profit shall be 10 per cent of the insurable value of the goods as such.

§ 30. Underinsurance

When the sum insured is lower than the insurable value, the Insurer shall only be liable for such proportion of the loss as the sum insured bears to the insurable value.

§ 31. Overinsurance

When the sum insured exceeds the insurable value, the Insurer shall only be liable for compensation up to the insurable value.

Chapter 10. Liability of the Insurer

§ 32. Principal rule

The Insurer shall be liable for loss caused by any one casualty up to the sum insured.

§ 33. Liability in excess of the sum insured

Even when the sum insured is exceeded, the Insurer shall be liable for:

1. Losses as specified in §§ 39 to 43.
2. Interest on the claim pursuant to § 49.

§ 34. The Insurer's right to avoid further liability by payment of the sum insured

When a casualty has occurred, the Insurer may avoid further liability for losses as specified in §§ 39 to 44 by notifying the Assured that he will pay the sum insured, or such proportion of the sum insured as applies to the goods involved in the casualty. In such case, the Insurer shall not be entitled to take over the goods pursuant to § 52.

Loss as specified shall nonetheless be recoverable in excess of the sum insured, provided it is attributable to measures implemented before the Assured was notified of the Insurer's decision.

§ 35. Total loss

There is a total loss when:

1. The entire consignment of goods has been destroyed.
2. The Assured is deprived of the entire consignment of goods with no possibility of retrieving it.
3. The transit to the named place of destination has been abandoned in accordance with § 27 or § 28.
4. The entire consignment of goods has been so severely damaged that at least 90 per cent of the value must be deemed to be lost.

In the event of a total loss, the Insurer shall be liable for the sum insured of the insured goods, but not in excess of their insurable value. No deduction shall be made in the compensation for any damage sustained during the period of insurance, whether or not this is covered by the insurance.

§ 36. Shortage

There is a shortage when a part of the insured consignment of goods has been lost as stated in § 35, first paragraph.

In the event of shortage, the Insurer shall be liable for such proportion of the sum insured of the entire consignment as corresponds to the goods that have been lost.

§ 35, second paragraph, shall apply correspondingly.

§ 37. Damage

When insured goods have been damaged, the Insurer may require that the damage be repaired in return for reimbursement of the costs of repair as they are incurred. Repairs may not be required if this results in unreasonable loss or inconvenience for the Assured.

If the Insurer does not or cannot require that the damage be repaired, or if complete repairs cannot be carried out, the Insurer shall be liable for a percentage of the insurable value of the damaged goods which corresponds to the final depreciation in their value (the damage percentage).

When the damage percentage for goods intended for resale is assessed at 50 per cent or more in a survey pursuant to § 47, the Insurer may demand that they be sold and he may decide the sale procedure. In such case, compensation shall be fixed at the difference between the insurable value, or the sum insured if this is lower, and the price obtained from sale of the goods. The sale must be requested without undue delay after the final survey report has been made available. If the goods are perishable, the Insurer may demand that they be sold without waiting for the final survey report, even if the damage percentage does not exceed 50. The Insurer's right to demand the sale of the goods pursuant to this paragraph is subject to the same limitations as the right of disposal pursuant to § 52.

Where the damaged goods are a total loss before the insurance period expires, the Assured may not claim compensation if:

1. An Insurer pays compensation for the total loss without deducting the partial damage, or
2. The total loss is not recoverable under any insurance.

§ 38. Damage to or loss of part of a complete unit

In the event of damage to or loss of a part of an object consisting of several parts, the Insurer shall only be liable for the repair charges or replacement of the part that has been damaged or lost. This applies even if it is essential that the object is complete.

§ 39. Salvage charges

The Insurer shall be liable for the Assured's salvage charges in accordance with § 6-4 of the Insurance Contracts Act, unless the provisions of § 40 are applied. In the case of an international transit, including transit to and from the Norwegian Continental Shelf, the Insurer shall not be liable for the Assured's liability for loss caused to a third party.

§ 40. General average

The Insurer shall be liable for general average contribution apportioned on the basis of the interest insured, if the general average act was undertaken on account of the risks covered by this insurance or ensuing from § 6, fourth paragraph. The contribution is recoverable on the basis of a general average adjustment, properly drawn up according to the rules of law applicable or to such terms and conditions as may be considered customary in the trade in question.

§ 41. Charges for providing security

The Insurer will reimburse the Assured for reasonable charges incurred in connection with providing security on account of a casualty.

§ 42. Litigation charges

When proceedings are instituted against the Assured in respect of a liability covered by this insurance, and when the Assured sues a third party for compensation in respect of a loss covered by this insurance, the Insurer shall be liable for the charges arising, provided that the steps taken have been approved by the Insurer or must be deemed justifiable.

§ 43. Charges in connection with settlement of claims

When the Insurer is liable for a loss, he shall also be liable for reasonable charges arising from the assessment of the loss and calculation of compensation. The Insurer shall always pay the expenses of his own insurance surveyor.

§ 44. Charges arising from measures relating to several interests

When charges as specified in §§ 39 to 43 have been incurred in connection with measures relating to several interests, the Insurer shall only be liable for such proportion of the charges as may fall upon the interest insured.

Chapter 11. Settlement of claims

§ 45. The Assured's duty of disclosure

In connection with the settlement of a claim, the Assured shall provide the Insurer with such information and documents as are available to him and which the Insurer requires for the purpose of assessing his liability and paying the claim.

The Assured shall also help to ensure that information and documents which are in the keeping of a third party, and which the Insurer requires for the purpose of assessing his liability, are delivered to the Insurer.

§ 46. Fraud

If the Assured during the settlement of a claim deliberately provides incorrect or incomplete information which he knows or must be aware may lead to his receiving compensation to which he is not entitled, he shall forfeit the claim and any other claims against the Insurer under this and other insurance contracts if the claim arises from the same casualty, cf. § 8-1, second paragraph, of the Insurance Contracts Act.

§ 47. Survey of damage

If the Assured claims for damage or for total loss in accordance with § 35, first paragraph, no. 4, the goods shall be surveyed jointly by a representative of the Assured and a representative of the Insurer, if so requested by the Insurer or the Assured.

Prior to the survey, the goods shall as far as possible be grouped according to the nature and the extent of the damage. The representatives shall as far as possible state their opinions concerning the probable cause of each instance of damage and the time of its occurrence, and indicate how the damage should be repaired or to what extent the damage reduces the value of the goods (the damage percentage).

Should the representatives of the Assured and of the Insurer disagree as to the extent and cause of the damage, the parties may agree to summon an arbitrator. In such case the arbitrator shall be appointed jointly by the parties' representatives. The arbitrator shall give a reasoned opinion concerning the questions which the parties' representatives agree to submit to him.

§ 48. Rates of exchange

If the Assured has had expenses in a currency other than that in which the sum insured is stipulated, conversion shall be based on the rate of exchange applicable on the day the expenses were incurred. If the expenses are payable at a specific time, and the Assured without

valid reason fails to pay them when they fall due, he may not claim compensation at a higher rate of exchange than the rate on the day on which payment was due. If the Assured in consultation with the Insurer has purchased foreign currency in advance, the rate of exchange applicable on the day of such purchase shall apply.

If the Insurer is liable for charges which have not been paid when the claims settlement takes place, conversion shall be based on the rate of exchange applicable on the day on which the claims statement is issued.

§ 49. Interest on the claim

The Assured shall be entitled to interest on the claim as from the expiry of two months from the day that notification of the casualty was sent to the Insurer. If the Insurer is liable for expenses incurred by the Assured, interest on reimbursement of expenses shall accrue as from two months at the earliest after the day the expenses were incurred.

Should the Assured neglect to provide information or documents as specified in § 45, he shall not be entitled to interest for any period of time lost thereby. The same applies if the Assured unwarrantedly declines full or partial settlement of his claim.

In all other matters regarding interest, Act No. 100 of 17 December 1976 relating to interest on delayed payment, etc., § 2, second paragraph, and § 3 shall apply.

If the sum insured is stipulated in a currency other than Norwegian krone, the interest pursuant to the first paragraph shall be calculated on the basis of a rate of interest equivalent to three months' LIBOR for the agreed currency plus 1.5 per cent, determined on the basis of the rate of interest applicable on the day the Insurer's liability to pay interest begins to run pursuant to the first paragraph. The interest rate shall subsequently be regulated according to the same rules every third month.

§ 50. The insurance document as prima facie evidence of ownership

When the Insurer has in good faith settled the claim or made other arrangements affecting this insurance after having had the insurance document presented to him and having endorsed the same to this effect, it may not later be contended that the person who presented the insurance document was not entitled to dispose of this insurance.

§ 51. The Insurer's right to demand return or presentation of insurance document upon payment of claim

The Insurer may demand that the insurance document be returned to him before paying the claim. Where an advance payment is made on the claim, the Insurer may demand that the insurance document be presented for endorsement.

§ 52. The Insurer's subrogation to the right to the goods on payment of claim

On payment of a claim for total loss or shortage, the Insurer shall be subrogated to the Assured's right to the goods for which the claim has been paid, unless the Insurer has waived his right not later than the time when payment is made. § 30 shall apply correspondingly.

In disposing of the goods to which the Insurer has taken over the right pursuant to the first paragraph, the Insurer is obliged to take due account of the interests of the Assured.

The Assured must provide the Insurer with all documents of importance to him as owner of the goods. Any charges incurred in this connection shall be borne by the Insurer.

Chapter 12. Claims against third party (recourse)

§ 53. The Insurer's right of subrogation to the Assured's claim against a third party

If the Assured has a claim against a third party, the Insurer shall on payment of the claim be subrogated to the Assured's right against the third party. This shall also apply in the case of freight forwarders, carriers, etc. where they are the persons effecting the insurance.

If the Insurer is only partly liable for the loss, the claim shall be divided proportionately between the Insurer and the Assured. The same applies when the compensation from the third party for the full loss would exceed what is payable by the Insurer, but the third party is liable only for a proportion of the loss or the entire amount of the loss cannot be recovered.

If the Insurer's claim produces a net amount in excess of that paid by him to the Assured with addition of interest, the Assured shall be entitled to the excess.

§ 54. The Assured's duty to maintain and secure the claim

The Assured must take any steps necessary to maintain and secure the claim until the Insurer himself can attend to his interests. If necessary, the Assured shall avail himself of expert technical and legal assistance.

If the Assured wilfully or through gross negligence fails to fulfil his duties pursuant to the preceding paragraph, he shall be liable for any loss suffered by the Insurer on account of such failure. In the case of national transits, however, the limitations of § 4-10 of the Insurance Contracts Act shall apply.

The Insurer's liability shall be reduced by an amount equal to that which he is precluded from collecting as a result of the Assured having waived the right to claim compensation from a third party, if such waiver cannot be deemed customary.

§ 55. The Assured's duty to assist the Insurer with information and documents

The Insurer is entitled to acquaint himself with all documents and other evidence, even before he takes over the claim. In the event of litigation between the Assured and a third party, the Insurer is entitled to have his own legal representative.

Chapter 13. Cancellation

§ 56. Cancellation in the event of fraud

When the duty of disclosure pursuant to § 12 has been fraudulently neglected, the Insurer may immediately cancel this insurance and other insurances with the person effecting the insurance. The same shall apply in respect of the Assured, if the duty of disclosure pursuant to § 13 has been fraudulently neglected.

If fraud has been committed pursuant to § 46, the Insurer may cancel this insurance and other insurances with the Assured by giving one week's notice.

§ 57. Cancellation in the event of incorrect information

If the Insurer learns that the information he has been given concerning the risk is incorrect or incomplete on any material point, he may cancel the insurance by giving 14 days' notice.

§ 58. Cancellation as a result of the Assured's action or omission

The Insurer may cancel the insurance contract by giving two months' notice if:

1. the Assured has wilfully brought about or attempted to bring about a casualty or caused a casualty through gross negligence, or
2. a safety regulation has been breached by the Assured or by a person with whom he may be identified pursuant to § 10, and cancellation is reasonable.

In the case of international transits, the period of notice of cancellation pursuant to the first paragraph shall be one week.

Chapter 14. Choice of law and jurisdiction

§ 59. Choice of law and jurisdiction

This insurance shall be subject to Norwegian law, including Act No. 69 of 16 June 1989 relating to Insurance Contracts, §§ 1-1 to 8-6 and §§ 20-1 and 20-2, unless otherwise prescribed by the Policy or these Clauses.

Disputes concerning this insurance shall be decided by the ordinary courts of law in the judicial district in which the Insurer has his headquarters.

1982 Institute Cargo Clauses (A Clauses and B Clauses up to Duration.)

Institute Marine Cargo Clauses, A

Institute Marine Cargo Clauses

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RISKS COVERED

1. - Risks Clause

This insurance covers all risks of loss of or damage to the subject-matter insured except as provided in Clauses 4, 5, 6 and 7 below.

2. - General Average Clause

This insurance covers general average and salvage charges, adjusted or determined according to the contract of affreightment and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 or elsewhere in this insurance.

3. - “Both to Blame Collision” Clause

This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment “Both to Blame Collision” Clause as is in respect of a loss recoverable hereunder. In the event of any claim by shipowners under the said Clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim.

EXCLUSIONS

4. - General Exclusion Clause

In no case shall this insurance cover:

- 4.1 loss damage or expense attributable to wilful misconduct of the Assured
- 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
- 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 4.3 “packing” shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)
- 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
- 4.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above.)
- 4.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel
- 4.7 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

5. - Unseaworthiness and Unfitness Exclusion Clause

- 5.1 In no case shall this insurance cover loss damage or expense arising from unseaworthiness of vessel or craft, unfitness of vessel craft conveyance container or lift van for the safe carriage of the subject-matter insured, where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.
- 5.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.

6. - War Exclusion Clause

In no case shall this insurance cover loss damage or expense caused by:

- 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
- 6.2 capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat
- 6.3 derelict mines torpedoes bombs or other derelict weapons of war.

7. - Strikes Exclusion Clause

In no case shall this insurance cover loss damage or expense:

- 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
- 7.3 caused by any terrorist or any person acting from a political motive.

DURATION

8. - Transit Clause

8.1 This insurance attaches from the time the goods leave the warehouse or place of storage at the place named herein for the commencement of the transit, continues during the ordinary course of transit and terminates either:

- 8.1.1 on delivery to the Consignees' or other final warehouse or place of storage at the destination named herein,
- 8.1.2 on delivery to any other warehouse or place of storage, whether prior to or at the destination named herein, which the Assured elect to use either
 - 8.1.2.1 for storage other than in the ordinary course of transit or
 - 8.1.2.2 for allocation or distribution, or

8.1.3 on the expiry of 60 days after completion of discharge overside of the goods hereby insured from the oversea vessel at the final port of discharge, whichever shall first occur.

8.2 If, after discharge overside from the oversea vessel at the final port of discharge, but prior to termination of this insurance, the goods are to be forwarded to a destination other than that to which they are insured hereunder, this insurance, whilst remaining subject to termination as provided for above, shall not extend beyond the commencement of transit to such other destination.

8.3 This insurance shall remain in force (subject to termination as provided for above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to shipowners or charterers under the contract of affreightment.

9. - Termination of Contract of Carriage Clause

If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before delivery of the goods as provided for in Clause 8 above, then this insurance shall also terminate unless prompt notice is given to the Underwriters and continuation of cover is requested when the insurance shall remain in force, subject to an additional premium if required by the Underwriters, either:

9.1 until the goods are sold and delivered at such port or place, or unless otherwise

specially agreed, until the expiry of 60 days after arrival of the goods hereby insured at such port or place, whichever shall first occur, or

9.2 if the goods are forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named herein or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

10. - Change of Voyage Clause

Where, after attachment of this insurance, the destination is changed by the Assured held covered at a premium and on conditions to be arranged subject to prompt notice being given to the Underwriters.

CLAIMS

11. - Insurable Interest Clause

11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.

11.2 Subject to 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Underwriters were not.

12. - Forwarding Charges Clause

Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter is covered under this insurance, the Underwriters will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject matter to the destination to which it is insured hereunder. This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their servants.

13. - Constructive Total Loss Clause

No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter to the destination to which it is insured would exceed its value on arrival.

14. - Increased Value Clause

14.1 If any Increased Value insurance is effected by the Assured on the cargo insured herein the agreed value of the cargo shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured. In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.

14.2 Where this insurance is on Increased Value the following clause shall apply: The agreed value of the cargo shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the cargo by the Assured, and liability under this insurance shall be in such proportion as the sum insured herein bears to such total amount insured. In the event of claim the Assured shall provide the Underwriters with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

15. - Not to Inure Clause

This insurance shall not inure to the benefit of the carrier or other bailee. MINIMISING LOSSES.

16. - Duty of Assured Clause

It is the duty of the Assured and their servants and agents in respect of loss recoverable hereunder:

16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the Underwriters will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

17. - Waiver Clause

Measures taken by the Assured or the Underwriters with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

AVOIDANCE OF DELAY

18. - Reasonable Despatch Clause

It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

19 - English Law and Practice Clause

This insurance is subject to English law and practice.

Institute Marine Cargo Clauses, B

Institute Marine Cargo Clauses

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RISKS COVERED

1. - Risks Clause

1 This insurance covers, except as provided in Clauses 4, 5, 6 and 7 below, 5:

1.1 loss of or damage to the subject-matter insured reasonably attributable to 6

1.1.1 fire or explosion 7

1.1.2 vessel or craft being stranded grounded sunk or capsized 8

1.1.3 overturning or derailment of land conveyance 9

1.1.4 collision or contact of vessel craft or conveyance with any external object other 10
than water

1.1.5 discharge of cargo at a port of distress 11

1.1.6 earthquake volcanic eruption or lightning, 12

1.2 loss of or damage to the subject-matter insured caused by 13

1.2.1 general average sacrifice 14

1.2.2 jettison or washing overboard 15

1.2.3 entry of sea lake or river water into vessel craft hold conveyance container liftvan 16
or place of storage,

1.3 total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft.

2. - General Average Clause

This insurance covers general average and salvage charges, adjusted or determined 19
according to the contract of affreightment and/or the governing law and practice, incurred
to avoid or in connection with the avoidance of loss from any cause except those excluded
in Clauses 4,5, 6 and 7 or elsewhere in this insurance.

3. - "Both to Blame Collision" Clause

This insurance is extended to indemnify the Assured against such proportion of liability under the contract of affreightment "Both to Blame Collision" Clause as is in respect of a loss recoverable hereunder. In the event of any claim by shipowners under the said Clause the Assured agree to notify the Underwriters who shall have the right, at their own cost and expense, to defend the Assured against such claim.

EXCLUSIONS

4. - General Exclusion Clause

4 In no case shall this insurance cover

4.1 loss damage or expense attributable to wilful misconduct of the Assured

4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured

4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured (for the purpose of this Clause 4.3 "packing" shall be deemed to include stowage in a container or liftvan but only when such stowage is carried out prior to attachment of this insurance or by the Assured or their servants)

4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured

4.5 loss damage or expense proximately caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)

4.6 loss damage or expense arising from insolvency or financial default of the owners managers charterers or operators of the vessel

4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons

4.8 loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

5. - Unseaworthiness and Unfitness Exclusion Clause

5.1 In no case shall this insurance cover loss damage or expense arising from unseaworthiness of vessel or craft, unfitness of vessel craft conveyance container or liftvan for the safe carriage of the subject-matter insured, where the Assured or their servants are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein.

5.2 The Underwriters waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination, unless the Assured or their servants are privy to such unseaworthiness or unfitness.

6. - War Exclusion Clause

In no case shall this insurance cover loss damage or expense caused by:

6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

6.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat

6.3 derelict mines torpedoes bombs or other derelict weapons of war.

7. - Strikes Exclusion Clause

In no case shall this insurance cover loss damage or expense:

7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions

7.3 caused by any terrorist or any person acting from a political motive.

